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In The
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**OFFICE EMPLOYES INTERNATIONAL UNION,
LOCAL No. 11**

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

No. 12,896

**PETITION TO SET ASIDE AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

JOINT APPENDIX

Chronological List of Relevant Docket Entries

- 8. 6.53 Charge filed, Office Employees International Union, Local No. 11 (Petitioner) against 8 organizations, Case No. 36-CA-410
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- 7. 1.54 Order rescheduling hearing and extending time in which to answer, Case No. 36-CA-410.
- 7.10.54 Answer of Warehousemen Local No. 206, No. 36-CA-410
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- 8.31.54 Answer, William C. Earhart, No. 36-CA-648
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- 9.21.54 Second Hearing Closed
- 1.10.55 Trial Examiner's Intermediate Report
- 2.14.55 General Counsel's Exceptions to Intermediate Report
- 2.15.55 Exceptions of Respondents Local 206, Joint Council and Building Association to Intermediate Report Received by NLRB
- 2.17.55 Exceptions of Respondents International, Earhart, Local 223 and Sweeney received by NLRB
- 5.11.55 Notice of Hearing for Oral Argument Issued
- 5.24.55 Oral Argument Before NLRB
- 8.25.55 Decision and Order Issued by NLRB

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UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging

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party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 5 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-410

Date Filed 8/6/53

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer SEE ATTACHED EXHIBIT I

Address of Establishment (Street and number, city, zone, and State) 1020 N. E. Third Avenue, Portland 12, Oregon

Number of Workers Employed 24

Type of Establishment (Factory, mine, wholesaler, etc.)

Identify principal product or service Labor Union

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Locals No. 162; 206; 255; 358; 305; Joint Council of Teamsters No. 37; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Teamsters Building Association and Security Administration Office, hereinafter called "Teamsters Unions", all employed members of Office Employees International Union, AFL, Local No. 11,

and had collective bargaining contracts with said Office Employees International Union, AFL, Local No. 11, hereinafter called "Office Employees Union".

These contracts herein referred to continued in full force and effect to April 1, 1953. Prior to April 1, 1953, and on or about January 28, 1953, Office Employees Union notified the Teamsters Unions herein above charged, as well as Locals No. 809, 499, 281, 223 and 220, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, requesting the opening of contracts for renegotiations. Following said date of January 28, 1953, and on or about February 9, 1953, representatives of the Office Employees Union met with a Committee of the Teamsters Unions regarding the Office Employees Union's proposals for new contracts. No agreement was reached at this session nor at a subsequent date.

Teamsters Unions violated Section 8 (a) (1) and (3) of the National Labor Relations Act of 1947, as amended, in that subsequent to February 9, 1953, and on or about
(SEE ATTACHED EXHIBIT II)

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employees International Union Local No. 11

4. Address (Street and number, city, zone, and State)
1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit
(To be filled in when charge is filed by a labor organization)
Office Employees International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building,
Washington 5, D. C.
Telephone No.

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7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ **THOMAS G. CURRENT**
Business Representative

Date August 6, 1953

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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NAMES OF EMPLOYERS CHARGED EXHIBIT I

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL, Local No. 162

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL, Local No. 206

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL, Local No. 255

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL, Local No. 358

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL, Local No. 305

Joint Council of Teamsters No. 37,

Int. Bro. of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL

Int. Bro. of Teamsters, Chauffeurs,
 Warehousemen & Helpers of America,
 AFL, Teamsters Building Association
 Int. Bro. of Teamsters, Chauffeurs,
 Warehousemen & Helpers of America,
 AFL, Security Administration Office

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BASIS OF THE CHARGE (Continued) EXHIBIT H

the last part of May, 1953, one, Mary Ermence, Administrator of the Security Administration Office of the Teamsters Unions, called a meeting of all employees in the Security Administration Office and advised them not to pay dues into Office Employees Union. These meetings were held during office hours and on employers' time and premises, and the presence of all employees was required. Subsequent meetings were called in a like manner by the said Administrator, and the employees were advised that they should all drop their membership with Office Employees Union and join Teamsters Unions, who are the employers herein, or their employment would be jeopardized.

At these meetings, the Administrator, Mary Ermence, advised that she was speaking for the Administrators of the Security Administration Office and on behalf of said Administrators. Various other Office Employees Union members were contacted by other officers of the employers listed herein and directed to join the Teamsters Unions or be discharged.

Teamsters Unions have violated Section 8. (a) (1) and (3) of the Labor Management Relations Act of 1947, as amended, in that one Dorothy Carlisle, who refused to join Teamsters Unions, was discharged on June 12, 1953, and that one, Janet Walton, who was threatened with discharge if she refused to join Teamsters Unions, and who refused to join Teamsters Unions, resigned from her employment in June of 1953 because of such coercion.

(1328)

Teamsters Unions have violated Section 8 (a) (1) and (5) of the Labor Management Relations Act of 1947, as amended, in that the Teamsters Unions have failed, refused, and neglected to bargain with Office Employees Unions since April 1, 1953, despite the fact that all employees of Teamsters Unions were employees of Office Employees Union.

Teamsters Unions have violated 8 (a) (1) and (2) of the Labor Management Relations Act of 1947, as amended, in that the Teamsters Unions, in which membership of employees of employer is required, is dominated, formed and administered by employers herein.

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-410

Date Filed 8/6/53

Amended: 5/7/54

Compliance Status Checked By: MK

1. *Employer Against Whom Charge Is Brought*

Name of Employers See Appendix A attached
 Address of Establishment (Street and number, city, zone, and State) 1020 N. E. Third Avenue, Portland 12, Oregon
 Number of Workers Employed 24
 Nature of Employer's Business (State whether manufacturing, mining, construction, transportation, communication, other public utility, wholesale or retail trade, service, etc., and give principal product or type of service rendered.) Labor Union

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

In or about April 1953, the employers named in Appendix A attached, by their officers, agents, or representatives, determined that a labor organization known as Grocery, Meat, Motorcycle and Miscellaneous Drivers Local No. 223, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, should take into membership and represent their office employees and all other office employees working in the Teamsters Building located at 1020 N.E. Third Avenue, Portland, Oregon, and thereafter the employers named in Appendix A attached assisted and supported said Local No. 223 in organizing their office employees, and at all times since the above date they have dominated and interfered with the administration of said Local No. 223.

By the acts set forth in the paragraph above, and by other acts and conduct, the employers have interfered with, restrained and coerced their employees, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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3. *Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge* Office Employees International Union, Local No. 11

4. *Address (Street and number, city, zone, and State)* 1008 S.W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)* Office Employees International Union

6. *Address of National or International, if any (Street and number, city, zone, and State)* 625 Bond Building, Washington 5, D. C.
Telephone No.

7. *Declaration*

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date May 6, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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APPENDIX A

NAMES OF EMPLOYERS CHARGED

General Teamsters, Auto Truck Drivers
and Helpers, Local No. 162
Warehousemen Local No. 206
Automotive, Garage and Service Station
Employees, Local No. 255

Dairy, Ice and Ice Cream Employees
 Local No. 305
 Laundry and Dry Cleaning Drivers
 Local No. 358
 Teamsters Joint Council No. 37
 Teamsters Building Association
 Oregon Teamsters' Security Plan Office

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UNITED STATES OF AMERICA
 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
 WAREHOUSEMEN LOCAL No. 206, affiliated with the
 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
 WAREHOUSEMEN AND HELPERS OF AMERICA
 and
 OFFICE EMPLOYEES INTERNATIONAL UNION,

LOCAL No. 11

COMPLAINT

It having been charged by Office Employees International Union, Local No. 11, that Oregon Teamsters' Security Plan Office and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein jointly called the Respondents, have engaged in and are now engaging in unfair labor practices at Portland, Oregon, affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's

Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I

Oregon Teamsters' Security Plan Office, hereinafter called Respondent Security Office, was established pursuant to a trust agreement entered into on the one hand by trustees designated by Oregon and Washington affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Teamsters International, and on the other hand by trustees designated by various employers having collective bargaining relationships with the aforesaid affiliates of Teamsters International. Respondent Security Office maintains its principal office in Portland, Oregon, where at all times alleged hereinafter it has employed a complement of seven to 10 office clerical employees. It is engaged primarily

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in receiving and collecting from employers throughout the State of Oregon and in Clark and Cowlitz Counties in the State of Washington, who are participants in some twenty employee health and welfare programs covering members of affiliates of Teamsters International throughout said area, employer contributions to such programs. Respondent Security Office further pays over to Occidental Life Insurance Company of California at San Francisco, California, a sum of money for premiums on the insurance policies issued by Occidental Life to provide the benefits established by the health and welfare programs. It also receives all employee claims filed under the several programs, maintains records thereof, processes same, recommends to Occidental Life payment thereof, and transmits payments to claimants.

Respondent Security Office receives and collects and pays as premiums to Occidental Life monies in excess of

\$1,000,000.00 annually. From the amounts Respondent Security Office pays to Occidental Life the latter refunds to the former for expenses of administration, an amount in excess of \$50,000.00 annually.

II.

Warehousemen Local No. 206, hereinafter called Respondent Local 206, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, chartered by and subject to the control of Teamsters International. It is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, by virtue, *inter alia*, of being multi-state enterprises, or producing or handling goods destined for out-of-state shipment valued in excess of \$25,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of \$50,000.00. At all times alleged hereinafter, Respondent Local 206 in the operation of its business has had two office clerical employees in its employ.

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III.

Respondent Local 206 and Respondent Security Office are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

IV.

Respondent Local 206 and Respondent Security Office are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

V)

A. Office Employees International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

B. Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, hereinafter called Teamsters Local 223, was chartered by Teamsters International and is, and at all times alleged herein, has been, a labor organization within the meaning of Section 2(5) of the Act. It is, and at all times alleged herein has been, subjected to the complete and absolute control of Teamsters International by virtue of the latter's imposition of a trusteeship, the trustee at all times alleged herein having been John J. Sweeney, an International Representative of Teamsters International.

VI.

Commencing on or about March 1, 1953, and at all times since, the Respondents, individually and jointly, and acting in concert with the Teamsters International, and pursuant to instructions, orders or suggestions from representatives of Teamsters International, have unlawfully dominated, assisted, sponsored, maintained, and contributed support to Teamsters Local 223 by the following acts:

1. determining that their office employees should relinquish Office Union as their collective bargaining representative and become members in Teamsters Local 223;

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2. promising their office employees better working conditions if they ceased their membership in Office Union and became members of Teamsters Local 223;
3. urging, persuading, and warning their office employees to refrain from assisting, becoming members

of, remaining members of, paying dues to, or attending meetings of Office Union;

4. actively soliciting membership among their office employees in Teamsters Local 223 during working hours in Respondents' Offices;
5. making implied threats of loss of employment or economic benefits in the event their office employees did not join Teamsters Local 223 and cease their affiliation with Office Union;
6. interrogating their office employees concerning their attendance at meetings of Office Union;
7. permitting their office supervisors to become members of Teamsters Local 223 and to actively participate in its activities; and
8. requiring their office employees to pay dues to Teamsters Local 223 as a condition of membership therein and as a condition of employment.

VII.

By all the acts of the Respondents, as set forth and described in paragraph VI above, and by each of said acts, the Respondents have interfered with, restrained, and coerced their office employees in the exercise of their rights guaranteed in Section 7 of the Act and have dominated and interfered with the formation and administration of Teamsters Local 223 and have contributed unlawful support and assistance to said Local, and thereby engaged in, and are thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

VIII.

The activities of the Respondents, as set forth and described in paragraph VI above, occurring in connection with the operations of the Respondents, as described in

paragraphs I and II above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX.

The activities of the Respondents, as set forth and described in paragraph VI above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (2) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 25th day of June, 1954, issues this Complaint against Oregon Teamsters' Security Plan Office and against Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Respondents herein.

Thomas P. Graham, Jr.,

THOMAS P. GRAHAM, JR.

Regional Director,

National Labor Relations Board,

Region 19

407 U. S. Court House,

Seattle, Washington

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL NO. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION,
LOCAL NO. 11

ANSWER

Comes now WAREHOUSEMEN LOCAL NO. 206 and in answer to the complaint, admits, denies, and alleges as follows:

I

Admits Paragraph I except that this respondent alleges on information and belief that the respondent, OREGON TEAMSTERS' SECURITY PLAN OFFICE, does not collect employer contributions. Further, respondent has no knowledge of the amount of money received as premiums by the Security Plan Office or how much the Occidental Life refunds to the Security Plan Office for the expense of administration and therefore denies the second paragraph contained in Paragraph I.

II

Respondent denies each and every allegation in Paragraph II except as hereinafter specifically admitted. Respondent admits that WAREHOUSEMEN LOCAL NO. 206 maintains its principal office at Portland, Oregon, and that it is, and has been, a labor organization within the

(1343)

meaning of Section 2(5) of the Act, and that it is chartered by the Teamsters' International and operates in accordance with the Teamsters' International Constitution and to that extent is subject to the control of the Teamsters' International. It further admits that it is engaged primarily in

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representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, and further admits that in its operation it has had two office clerical employees in its employ. Insofar as the allegations contained in this paragraph allege that the employers with which Local 206 has had collective bargaining agreements are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, the amount of dollar volume in connection therewith, this respondent has no knowledge with which to form a belief and therefore denies the same.

III

Respondent denies Paragraphs III, IV, VI, VII, VIII and IX.

IV

Admits Paragraph V.

V

Respondent WAREHOUSEMEN LOCAL NO. 206 specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

VII.

Office Employees International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

VIII.

In or about the month of March 1954, Respondent International and Respondent Local 223, in accordance with a policy of Respondent International that all office employees of its Local Unions must join a Local Union, acting through the Secretary of Respondent Local 223, solicited and instructed the office employee of Respondent Local 223 to become a member of Respondent Local 223 and to withdraw her membership in Office Union.

IX.

On or about July 29, 1954, Respondent Building Association, acting pursuant to instructions from Respondent International, discharged its employee Virginia Olstad, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpoena of the Board requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein one of the Respondents was a Local Union chartered by Respondent International.

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X.

On or about June 10, 1954, Respondent Local 206 caused the employment of its employee June Cook to be terminated, and has at all times thereafter refused to reinstate

WHEREFORE, respondent WAREHOUSEMEN LOCAL NO. 206 having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE

By /s/

JAMES LANDYE

Attorneys for Respondent

Warehousemen Local No. 206

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STATE OF OREGON

COUNTY OF MULTNOMAH

} SS.

I, JACK ESTABROOK, being first duly sworn, say that I am the Secretary of Respondent WAREHOUSEMEN LOCAL NO. 206 in the within entitled cause and that the foregoing Answer is true as I verily believe.

JACK ESTABROOK

Jack Estabrook

Teamsters' Building

Portland, Oregon

Subscribed and sworn to before me this 10th day of July, 1954.

WESLEY A. FRANKLIN

Notary Public for Oregon

My Commission Expires: 12/22/56

I hereby certify that I am Attorney for Warehousemen Local No. 206, and that I have served a copy of this Answer by mail upon Richard R. Morris, Failing Building, Portland, Oregon, attorney for the Oregon Teamsters' Security Plan Office, and a copy of this Answer by mail upon Paul

said employee because of her membership in and activities on behalf of Office Union.

XI.

By the action of Respondent Local 223, which Respondent International has under trusteeship, in soliciting and instructing an employee of Respondent Local 223 to become a member of Respondent Local 223 and withdraw from Office Union, as set forth and described in paragraph VIII above, and by instructing Respondent Building Association to discharge Virginia Olstad, as set forth and described in paragraph IX above, Respondent International has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and has dominated and contributed unlawful support and assistance to Respondent Local 223, and thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

XII.

By the discharge of Virginia Olstad, as set forth and described in paragraph IX above, Respondent Building Association and Respondent International have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Office Union, and thus encouraged and now are encouraging membership in Respondent Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, Respondent Building Association and Respondent International have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act and because they were about to give testimony under the Act, and thereby engaged in, and are thereby engaging in unfair labor practices within the mean-

(1345)

T. Bailey, 1207 SW Third Avenue, Portland, Oregon,
attorney for Office Employees International Union Local
No. 11 this 10th day of July, 1954.

JAMES LANDYE
of Attorneys for Respondent
Warehousemen Local
No. 206

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION,
LOCAL No. 11

ANSWER

Comes now William C. Earhart, Administrator, and in
answer to the complaint herein, admits, denies and alleges
as follows:

I.

Denies each and every allegation contained in paragraph
I, and in this connection, Respondent alleges:

A number of local unions affiliated with the International
Brotherhood of Teamsters, Chauffeurs and Warehousemen
of America and employers whose employees are repre-
sented by one of said locals have established Trust agree-
ments. Pursuant to the terms of the Trust agreements,

funds are provided to purchase health and welfare benefits for the employees of the employer-party to the trust agreement and who are represented by one of said locals.

Said Trust agreements provide for the appointment by the Trustees of an Administrator of the Trust. Respondent is the duly appointed and acting Administrator of said Trust agreements. As such Administrator, he maintains an office, employing several persons. As such Administrator, he processes and pays claims of employees entitled to the benefits provided pursuant to the terms of the Trust agreements. The premiums paid for the insurance procured pursuant to the Trust agreements exceed \$1,000,000.00 per year. The Administrator receives in excess of

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\$25,000.00 per year from the insurance carrier to pay the expenses of his office.

II.

Answering paragraph II, Respondent admits that Warehousemen's Union Local No. 206, is a labor organization with an office in Portland, Oregon; admits it has labor contracts with employers in Portland, Oregon; save as admitted herein, Respondent denies each allegation in said paragraph.

III.

Respondent denies each and every allegation contained in paragraphs III, IV, V, VI, VII, VIII and IX.

IV.

Respondent alleges it is not subject to the Labor-Management Relations Act; it has not committed any unfair labor practice.

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WHEREFORE, having fully answered the Complaint herein, Respondent demands that it be dismissed.

RICHARD R. MORRIS

Attorney for

Respondent Administrator

STATE OF OREGON

COUNTY OF MULTNOMAH

ss.

I, WILLIAM C. EARHART, being first duly sworn, say that I am the Administrator in the within-entitled cause and that the foregoing Answer is true as I verily believe.

WILLIAM C. EARHART

SUBSCRIBED and sworn to before me this 12th day of July, 1954.

LILLIAN R. BRILL

*Notary Public for the
State of Oregon*

My Commission Expires: 5/4/56

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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-637

Date Filed 8/10/54

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Teamsters Building Association, Inc.

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon; 100 Indiana Avenue N.W., Washington, D. C. (International)

Number of Workers Employed

Type of Establishment (Factory, mine, wholesaler, etc.)

Identify principal product or service Labor Union

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about July 29, 1954, the above named employer, by its officers, agents and representatives, discharged Virginia Olstad, one of its employees, because of her activities on behalf of Office Employees International Union, AFL, and because of her honoring a subpoena to appear before the N.L.R.B. in Case No. 36-CA-410. The above described conduct was in violation of Section 8(a)(1) of the Labor Management Relations Act of 1947, as amended, in that there was interference with the rights of the above named employee under Section 7 of said Act.

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The above conduct was in violation of Section 8(a)(3) of said Act in that the discharge was discriminatory and an attempt to discourage Virginia Olstad from membership in Office Employees International Union, AFL, and to encourage her to become a member of Local No. 223 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

The above described conduct was in violation of Section 8(a)(4) in that said discharge was based in part upon said Virginia Olstad's response to subpoena in a case brought under said Act.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number)
Office Employees International Union Local No. 11

4. *Address* (Street and number, city, zone, and State)
1008 S.W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit*
(To be filled in when charge is filed by a labor organization)
Office Employees International Union

6. *Address of National or International, if any* (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.
Telephone No.

7. *Declaration*

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date August 10, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-647

Date Filed 8-13-54

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37

Address of Establishment Street and number, city, zone, and State Interna: 100 Indiana Ave. N.W., Washington, D. C.; 37: 1020 N.E. Third Avenue, Portland 12, Oregon

Number of Workers Employed 2

Type of Establishment (Factory, mine, wholesaler, etc). Labor Union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 13, 1954, the above-named employers, by their officers, agents and representatives, discharged Irene Morecom, an employee, because of her membership in and activities on behalf of Office Employees International Union, Local No. 11, and because of her honoring a subpoena to appear before the N.L.R.B. hearing in Case No. 36-CA-410.

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-638

Date Filed 8/10/54

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Local No. 223 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL.

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon; 100 Indiana Avenue N.W., Washington, D. C. (International)

Number of Workers employed 1

Type of Establishment (Factory, mine, wholesaler, etc.)

Identify principal product or service Labor Union

The above-named employer has engaged in and is engaged

The above conduct constitutes interference with the rights of employees under Section 7 of the Act, and discourages membership in Local No. 11, and encourages membership in Teamster Local 223, and amounts to unlawful support and assistance to Teamster Local 223 all in violation of Section 8(a)(1)(2)(3) and (4) of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employees International Union, Local No. 11

4. Address (Street and number, city, zone, and State)
1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BE 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled when charge is filed by a labor organization)
Office Employees International Union

6. Address of National or International, if any (Street and number, city, zone, and State)
625 Bond Building, Washington 5, D. C.
Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By JAMES N. BEYER
Secretary-Treasurer

Date August 13, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80).

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ing in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named employers violated Sections 8(a)(1) and 8(a)(2) of the Labor Management Relations Act of 1947, as amended, in that during the month of April 1954 said employer, by its officers, agents and representatives, dominated and interfered with the administration of the labor organization and interfered with, restrained and coerced its employee in the exercise of the rights guaranteed in Section 7 of the Labor Management Relations Act in that said employer instructed and solicited its employee to become a member of Local No. 223. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number)
Office Employees International Union Local No. 11

4. *Address* (Street and number, city, zone, and State)
1008 S.W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit* (To be filled in when charge is filed by a labor organization)
Office Employees International Union

6. *Address of National or International, if any* (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.
Telephone No.

7. *Declaration*

I declare that I have read the above charge and that the

statements therein are true to the best of my knowledge and belief.

By /s/° JAMES N. BEYER
Secretary-Treasurer

Date 8/10/54

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

(Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-639

Date Filed 8/10/54

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer Local No. 206 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon

Number of Workers Employed

Type of Establishment (Factory, mine, wholesaler, etc.)

Labor Union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named employer, by its officers, agents and representatives, caused the termination of employment of June Cook, one of its employees, on or about June 10, 1954, because of her membership in and activities on behalf of Office Employees International Union, AFL.

The above described conduct of the employer was in violation of Section 8(a)(1) and Section 8(a)(3) of the Labor Management Relations Act of 1947, as amended, in that said employer interfered, restrained and coerced said employee in the exercise of her rights guaranteed in Section 7 of said Act, and constituted discrimination in regard to hire or tenure of employment by discouraging membership of said employee in Office Employees International Union, AFL.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number) Office Employees International Union Local No. 11

4. *Address* (Street and number, city, zone, and State) 1008 S.W. Sixth Avenue, Portland, Oregon.

Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit* (To be filled in when charge is filed by a labor organization) Office Employees International Union

6. *Address of National or International, if any* (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.
Telephone No.

7. *Declaration*

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date August 10, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223,

GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS
and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, Affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

CONSOLIDATED COMPLAINT

It having been charged by Office Employees International Union, Local No. 11, in Case No. 36-CA-637, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Teamsters Building Association, Inc.; in Case No. 36-CA-638, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and in Case No. 36-CA-639, that Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, have engaged in and are now engaging in certain unfair labor

practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Sections 102.15 and 102.33, hereby issues this Consolidated Complaint and alleges as follows:

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I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada. Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of \$700,000.00 annually.

II.

Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, hereinafter called Respondent Local 223, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, char-

tered by and subject to the complete and absolute control of Respondent International by virtue of a trusteeship imposed by Respondent International. It is engaged primarily in representing its members, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act by virtue, *inter alia*, of being multi-state enterprises, or producing or handling goods destined for out-of-state shipment valued in excess of \$50,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of \$500,000.00. At all times alleged hereinafter, Respondent Local 223 in the operation of its business has had the part-time services of one office clerical employee.

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III.

Teamsters Building Association, Inc., hereinafter called Respondent Building Association, is an Oregon corporation, maintaining its principal office in Portland, Oregon. It was formed by Portland, Oregon, affiliates of Respondent International, including Local No. 162, General Teamsters, Auto Truck Drivers and Helpers. Now, and at all times alleged herein, it has existed for the purpose of owning and maintaining an office building in Portland, Oregon, to provide office space to Local Unions of Respondent International located in said city, and to other affiliated bodies. At all times alleged herein, all 11 Local Unions chartered by Respondent International in Portland, Oregon, and Teamster Joint Council 37 have maintained offices in the aforesaid office building, and, in addition, office space has been provided for Respondent International's organizer, John J. Sweeney, and for Oregon Teamsters Security Plan Office which administers health and welfare programs covering members of Local Unions of Respondent Inter-

national throughout the State of Oregon and in parts of the States of Washington, Idaho and Montana. At all times alleged hereinafter, Respondent Building Association in the operation of its business has had at least one telephone operator in its employ.

IV.

Warehousemen Local No. 206, hereinafter called Respondent Local 206, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, chartered by and subject to the control of Respondent International. It is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act by virtue, *inter alia*, of being multi-state enterprises, or producing or handling goods destined for out-of-state shipment valued in excess of \$50,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of \$500,000.00. At all times alleged hereinafter, Respondent Local 206 in the operation of its business

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has had two office clerical employees in its employ.

V.

Respondents International, Local 223, Building Association, and Local 206 are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

VI.

Respondents International, Local 223, Building Association, and Local 206 are, and at all times alleged herein

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ing of Section 8(a)(4) of the Act; and by the same conduct, Respondent Building Association and Respondent International have interfered with, restrained and coerced em-

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ployees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XIII.

By instructing its own employee to join it and to withdraw her membership in Office Union, as set forth and described in paragraph VIII above, Respondent Local 223 has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and in its capacity as an employer has dominated and contributed unlawful support and assistance to itself in its capacity as a labor organization, and thereby engaged in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

XIV.

By terminating the employment of June Cook, as set forth and described in paragraph X above, Respondent Local 206 has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and has discriminated, and now is discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now is discouraging membership in Office Union, and thus encouraged and now is encouraging membership in Respondent Local 223, and thereby engaged in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

XV.

The activities of the Respondents, as set forth and described in paragraphs VIII, IX and X above, occurring in connection with the operations of the Respondents, as described in paragraphs I, II, III and IV above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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XVI.

The activities of the Respondents, as set forth and described in paragraphs VIII, IX and X above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), (3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 13th day of August, 1954, issues this Consolidated Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; Teamsters Building Association, Inc.; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the Respondents herein.

THOMAS P. GRAHAM, JR.

Thomas P. Graham, Jr.,

Regional Director

National Labor Relations Board,
19th Region

407 U. S. Court House,
Seattle 4, Washington

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223,

GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS
and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, Affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

AMENDMENT TO CONSOLIDATED COMPLAINT

Upon August 13, 1954, a Consolidated Complaint issued in the above-entitled proceedings. Acting pursuant to Section 102.17 of the Board's Rules and Regulations, Series 6, as amended, the aforesaid Consolidated Complaint is hereby amended by (1) adding as a second paragraph to paragraph IX of the Consolidated Complaint, the following allegation:

On or about July 28, 1954, Respondent Building Association, acting pursuant to instructions from Respondent International, relieved employee Irene Morcom of the

duties she had been performing for Respondent Building Association and simultaneously ceased paying her an amount of ten (10) dollars per week which she had been receiving in payment for her services for Respondent Building Association, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpoena of the Board requiring her to testify at the aforementioned hearing conducted in Case No. 36-CA-410;

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by (2) inserting in the sixth line of paragraph XI, after the words "Virginia Olstad," the following words:
and to terminate the services of Irene Morcom;
and by (3) inserting in the first line of paragraph XII, after the words "Virginia Olstad," the following words:
and by terminating the services of Irene Morcom.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 17th day of August, 1954, issues this Amendment to Consolidated Complaint.

PATRICK H. WALKER
Patrick H. Walker,
Acting Regional Director
National Labor Relations Board

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and
JOINT COUNCIL OF DRIVERS, No. 37
and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

COMPLAINT

It having been charged by Office Employees International Union, Local No. 11, in Case No. 36-CA-647, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada.

Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on

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duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of \$700,000.00 annually.

II.

Joint Council of Drivers, No. 37, hereinafter called Respondent Joint Council, is and, at all times alleged herein, has been a labor organization within the meaning of Section 2(5) of the Act, having as affiliates twenty-one Local Unions chartered by Respondent International in the State of Oregon, and two Local Unions chartered by Respondent International in the State of Washington. Respondent Joint Council maintains its principal office in Portland, Oregon, and is engaged primarily in supervising and coordinating relations among its member locals. Respondent Joint Council was formed pursuant to and as required by the Constitution of Respondent International and is subject to control by Respondent International. Its income is derived from dues paid by the Local Unions affiliated with it. At all times herein alleged, Respondent Joint Council has had at least two office clerical employees in its employ.

III.

Respondents International and Joint Council are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

IV.

Respondents International and Joint Council are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

V.

Office Employees International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

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VI.

On or about August 13, 1954, Respondent Joint Council, acting pursuant to instructions from Respondent International, discharged its employee Irene Morcom, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpoena of the Board, requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein one of the Respondents was a Local Union chartered by Respondent International and affiliated with Respondent Joint Council.

VII.

By the discharge of Irene Morcom, as set forth and described in paragraph VI above, Respondent Joint Council and Respondent International have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Office Union, and thus encouraged and now are encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, a labor organization within the meaning of Section 2(5) of the Act, hereinafter called Local 223, and thereby en-

gaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, Respondent Joint Council and Respondent International have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act, and because they were about to give testimony under the Act, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(4) of the Act; and by the same conduct, Respondent Joint Council and Respondent International have dominated and contributed unlawful support and assistance to Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act; and by the same conduct, Respondent Joint Council and Respondent Inter-

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national have interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in and are thereby engaging in unfair labor practices within the meaning of Section 3(a)(1) of the Act.

VIII.

The activities of the Respondents, as set forth and described in paragraph VI above, occurring in connection with the operations of the Respondents, as described in paragraphs I and II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX.

The activities of the Respondents, as set forth and described in paragraph VI above, constitute unfair labor

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practices affecting commerce within the meaning of Section 8(a)(1)(2)(3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 17th day of August, 1954, issues this Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, the Respondents herein.

PATRICK H. WALKER
Patrick H. Walker,
Acting Regional Director
National Labor Relations Board,
19th Region
407 U. S. Court House,
Seattle 4, Washington

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write In This Space

Case No. 36-CA-648

Date Filed 8/19/54

Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer Please see attached sheet

Address of Establishment (Street and number, city, zone, and State) Int'l.—100 Indiana Ave. N.W., Washington, D.C.; Plan Off.—1020 N.E. Third Ave., Portland 12, Oregon

Number of Workers Employed 11

Type of Establishment (Factory, mine, wholesaler, etc.)

Labor union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named employers, by their officers, agents or representatives, on or about August 13, 1954, discharged employee Marion Henry and on or about August 16, 1954, discharged employee Mary Ermence because of their membership in and activities on behalf of Office Employees' International Union, Local No. 11; because of their refusal to support Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; because of their having engaged in concerted activities within the meaning of Section 7 of the Act; because they had announced they would honor subpoenas of the Board requiring them to testify at a hearing being conducted in Case No. 36-CA-410 wherein Local No. 223 was named as a dominated union and would testify truthfully therein.

The above-named International and John J. Sweeney prior to the hearing in Case No. 36-CA-410 further at-

(1384)

tempted to dissuade employees from honoring Board subpoenas and from testifying in the aforementioned Board hearing and attempted to induce prospective witnesses to commit perjury.

3. *Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge* Office Employees International Union, Local No. 11

4. *Address (Street and number, city, zone, and State)* 1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)* Office Employees International Union

6. *Address of National or International, if any (Street and number, city, zone, and State)* 707 Continental Building, 1012 - 14th Street, Washington 5, D. C.
Telephone No. Ex 3-4464

7. *Declaration*

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Secretary-Treasurer
By /s/ JAMES N. BEYER

Date August 18, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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NAME OF EMPLOYER: (From previous page)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL, and its agent, John J. Sweeney, and Oregon Teamster Security Plan Office and

William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS
AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY
PLAN OFFICE, AND WILLIAM C. EARHART, ADMINISTRATOR
THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION
FUND
and
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

COMPLAINT

It having been charged by Office Employees International Union, Local No. 11, in Case No. 36-CA-648, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent, John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Acting Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada.

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Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of \$700,000.00 annually.

II.

At all times alleged herein, Respondent John J. Sweeney has been a paid representative of Respondent International and has acted as agent of said International.

III.

Oregon Teamsters' Security Plan Office, hereinafter called Respondent Security Office, was established pursuant to trust agreements entered into on the one hand by trustees designated by Local Unions chartered by Respondent International in the State of Oregon and in the State of Washington, and on the other hand by trustees designated by various employers having collective bargaining relationships with said Local Unions. Respondent Security

Office maintains its principal office in Portland, Oregon, where at all times alleged hereinafter it has employed a complement of seven to ten office clerical employees. Since about April 1954, William C. Earhart has been designated administrator of Respondent Security Office and of Teamsters Security Administration Fund, from which the expenses of operating Respondent Security Office are obtained. Respondent Security Office was established for the purpose of receiving and collecting from employers throughout the State of Oregon, and in parts of the States of Washington, Idaho, and Montana, who are participants in health and welfare programs covering employees represented by Local Unions of Respondent International, employer contributions to such programs. Respondents

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Security Office and Earhart pay over to Occidental Life Insurance Company of California at San Francisco, California, a sum of money for premiums on the insurance policies issued by Occidental Life to provide the benefits established by the health and welfare programs. They also receive all employee claims filed under the several programs, maintain records thereof, process same, recommend to Occidental Life payment thereof, and transmit payments to claimants.

Respondents Security Office and Earhart receive and collect and pay as premiums to Occidental Life monies in excess of \$2,000,000.00 annually. From these amounts Occidental Life refunds to the Teamster Security Administration Fund for expenses of administering Respondent Security Office, an amount in excess of \$80,000.00 annually.

IV.

Respondents International and Sweeney and Respondents Security Office and Earhart are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

V.

Respondents International and Sweeney and Respondents Security Office and Earhart are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

VI.

Office Employees International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

VII.

During the month of July 1954, Respondent International and Respondent Sweeney, individually and as agent for Respondent International, attempted to dissuade employees from honoring Board subpoenas in Case No. 36-CA-410, and from testifying at the hearing in said case, and further sought to induce employees to withhold information from the Board when testifying at said hearing and to perjure themselves.

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VIII.

On or about August 13, 1954, Respondents Security Office and Earhart, acting pursuant to instructions from Respondent International, discharged their employee Marion Henry, and have at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, because of her activities in opposition to Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, a labor organization within the meaning of Section 2(5) of the Act, hereinafter called Local 223, because of her having engaged in concerted activities

within the meaning of Section 7 of the Act, and because of her honoring a subpoena of the Board requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein Local 223 was named as a dominated union.

IX.

On or about August 16, 1954, Respondents Security Office and Earhart, acting pursuant to instructions from Respondent International, discharged their employee Mary Ermence, and have at all times thereafter refused to reinstate said employee because of her activities on behalf of Office Union, because of her activities in opposition to Local 223 and because she had indicated she would honor a subpoena of the Board requiring her to testify at the hearing in Case No. 36-CA-410 and would not perjure herself as requested by Respondents International and Sweeney.

X.

By all the acts of Respondents International and Sweeney, as set forth and described in paragraphs VII, VIII and IX above, and by each of said acts, Respondents International and Sweeney have interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, Respondents International and Sweeney have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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XI.

By all the acts of Respondents Security Office and Earhart, as set forth and described in paragraphs VIII and IX above, and by each of said acts, Respondents Security Office and Earhart have interfered with, restrained, and

coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, Respondents Security Office and Earhart have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XII.

By the discharge of Marion Henry, as set forth and described in paragraph VIII above, and the discharge of Mary Ermence, as set forth and described in paragraph IX above, Respondents International and Sweeney, and Respondents Security Office and Earhart have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, the afore-named Respondents have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act, and because they were about to give truthful testimony under the Act detrimental to said Respondents, and thereby engaged in, and are thereby engaging in unfair labor practices with the meaning of Section 8(a)(4) of the Act; and by the same conduct, the afore-named Respondents have dominated and contributed unlawful support and assistance to Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

XIII.

The activities of Respondents, as set forth and described in paragraphs VII, VIII and IX above, occurring in connection with the operations of Respondents as described in

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paragraphs I and III above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV.

The activities of the Respondents, as set forth and described in paragraphs VII, VIII and IX above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1)(2)(3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 19th day of August, 1954, issues this Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, Respondents herein.

PATRICK H. WALKER

Patrick H. Walker,

Acting Regional Director

National Labor Relations Board,
19th Region

407 U. S. Court House,
Seattle 4, Washington

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS
AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY
PLAN OFFICE, AND WILLIAM C. EARHART, ADMINISTRATOR
THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION

FUND

and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

ANSWER

Comes now William C. Earhart, Administrator, and for
answer to the Complaint herein; admits, denies and alleges
as follows:

I.

Answering Paragraph I, Respondent admits that Inter-
national Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America is a labor organization,
that it has issued charters to affiliated local unions, that
its local unions have members, that said International has
officers. As to the other matters contained in said Para-
graph, Respondent alleges it has not sufficient knowledge
or information to form a belief as to the truth or falsity
of said allegations and, therefore, denies each and every
one of them.

II.

Answering Paragraph II, Respondent alleges that it does
not have knowledge sufficient to form a belief as to the truth
or falsity of the matters contained therein and, therefore,
denies each and every allegation in said Paragraph.

III.

Answering Paragraph III, Respondent admits that as

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Administrator he maintains an office in Portland, Oregon, designated the Oregon Teamsters' Security Plan Office, that said office was established pursuant to the terms of trust agreements entered into between employers having labor contracts with local unions chartered by Respondent International, that he employs a complement of seven to ten office clerical employees, that as Administrator he maintains a bank account entitled, "Teamsters' Security Administration Fund," that out of said account the expenses of operating the office are paid, that as Administrator he receives funds to pay premiums on insurance policies issued by Occidental Life Insurance Company of California to provide the benefits authorized by said trust agreements, processes said claims, recommends payment thereof, and transmits payments to said claimants. Admits that he collects and pays as premiums to Occidental Life in excess of \$2,000,000.00 per year and receives from said Occidental Life an amount in excess of \$80,000.00 annually to administer said office. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

IV.

Answering Paragraph IV, Respondent admits that he is an employer and, as to the remaining allegations contained in said Paragraph, Respondent alleges he does not have sufficient knowledge to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

V.

Answering Paragraph V, Respondent for himself denies the allegations contained therein and, insofar as they affect other Respondents, alleges he lacks sufficient knowledge

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to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

VI.

Answering Paragraph VI, Respondent denies each and every allegation contained therein.

VII.

Answering Paragraph VII, Respondent alleges he has not sufficient information to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

VIII.

Answering Paragraph VIII, Respondent admits he discharged Mary Ermence. Save and except as admitted herein, Respondent denies each and every allegation contained in said Paragraph.

IX.

Answering Paragraph IX, Respondent admits he discharged Mary Ermence. Save and except as admitted herein, Respondent denies each and every allegation contained in said Paragraph.

X.

Answering Paragraph X, Respondent alleges that he lacks knowledge sufficient to form a belief as to the truth or falsity of the matters contained therein and, therefore, denies each and every allegation contained in said Paragraph.

XI.

Answering Paragraph XI, Respondent denies each and every allegation contained therein.

XII.

Answering Paragraph XII, Respondent denies each and every allegation contained therein.

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XIII.

Answering Paragraph XIII, Respondent denies each and every allegation contained therein.

XIV.

Answering Paragraph XIV, Respondent denies each and every allegation contained therein.

Respondent alleges that he has committed no unfair labor practice as defined by the Act and that the Board has not or should not assert jurisdiction over Respondent's activities and the assumption of jurisdiction will not effectuate the purposes of the Act.

Respondent also objects to the consolidation of Case No. 36-CA-648 with the other cases and moves for an order that Case No. 36-CA-648 be severed from the other cases.

RICHARD R. MORRIS

Attorney for Respondent
618 Failing Building
Portland 4, Oregon

STATE OF OREGON

COUNTY OF MULTNOMAH

SS.

I, WILLIAM C. EARHART, being first duly sworn, say that I am the Administrator in the within-entitled cause and that the foregoing Answer is true as I verily believe.

WILLIAM C. EARHART

SUBSCRIBED and sworn to before me this 31st day of August,

LILLIAN R. BRICE

Notary Public for the State of Oregon
My Commission Expires: May 4, 1956

1406

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and
TEAMSTERS BUILDING ASSOCIATION, INC.

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Local No. 223,

GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS,
and

WAREHOUSEMEN LOCAL No. 206, Affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
and

OFFICE EMPLOYEES INTERNATIONAL UNION, Local No. 11.

ANSWER

Comes now TEAMSTERS BUILDING ASSOCIATION, INC. and in answer to the complaint herein, admits, denies, and alleges as follows:

I.

Admits all Paragraph I except this respondent does not have sufficient knowledge upon which to form a belief as to the exact amount of annual revenue derived by the International from Local unions, or the exact number of affiliated local unions, and therefore denies the same.

II.

Answering Paragraph II, Respondent admits that Local No. 223 is a labor organization with its principal office in

Portland, Oregon and is chartered by the International, and that it represents its members in their collective bargaining relationship in and around Portland, Oregon but has no information upon which to form a belief as to the balance of Paragraph II and therefore denies the same.

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III.

Admits Paragraph III except in this connection alleges that there are ten local unions in the said building. With reference to the Oregon Teamsters Security Plan office and the number of members covered in the States of Washington, Idaho, and Montana, this respondent has no information upon which to form a belief and therefore denies the same.

IV.

Answering Paragraph IV, admits that Local No. 206 is a labor organization with its principal office in Portland, Oregon, and is chartered by the International, and that it represents its members in their collective bargaining relationships in and around Portland, but has no information upon which to form a belief as to the balance of Paragraph IV and therefore denies the same.

V.

Denies Paragraphs V and VI.

VI.

Admits Paragraph VII.

VII.

Respondent does not have sufficient knowledge or belief as to the truth or falsity of the matters contained in Paragraphs VIII, X, XI, XIII, XIV, and therefore denies each and every allegation.

VIII.

Denies Paragraphs IX, XII, XV, and XVI.

IX.

Respondent Teamsters Building Association, Inc. specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction:

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WHEREFORE, respondent Teamsters Building Association, Inc. having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE

By /s/ JAMES LANDYE

Attorneys for Respondent

Teamsters Building Association, Inc.

STATE OF OREGON,

COUNTY OF MULTNOMAH

ss.

I, CLYDE C. CROSBY, being first duly sworn, say that I am the President of Respondent, Teamsters Building Association, Inc., in the within entitled cause, and that the foregoing Answer is true as I verily believe.

CLYDE C. CROSBY

Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

Notary Public for Oregon

My Commission expires: 9/30/55

JEWELL SLATER

1409

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-639

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL NO. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11

Comes now WAREHOUSEMEN'S LOCAL NO. 206,
and in answer to the complaint herein, admits, denies, and
alleges as follows:

I.

Admits Paragraph I except this respondent does not
have sufficient knowledge upon which to form a belief as
to the exact amount of annual revenue derived by the In-
ternational from local unions, or the exact number of
affiliated local unions, and therefore denies the same.

II.

Respondent does not have sufficient knowledge or belief
as to the truth or falsity of the matters contained in Para-
graph II and therefore denies each and every allegation.

III.

Admits Paragraph III except that it does not have suffi-
cient knowledge to form a belief as to the number of mem-
bers covered by the Oregon Teamsters Security Plan in
the States of Washington, Idaho, and Montana, and there-
fore denies the same.

IV.

Answering Paragraph IV, respondent denies each and every allegation in Paragraph IV except as hereinafter specifically admitted. Respondent admits that Warehousemen Local No. 206 maintains its principal office at Portland, Oregon, and that it is, and has been a labor organization

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within the meaning of Section 2(5) of the Act, that it is chartered by the Teamsters International and operates in accordance with the Teamsters International Constitution and to that extent is subject to the control of the Teamsters International. It further admits that it is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, and further admits that in its operation it has had two office clerical employees in its employ. Insofar as the allegations contained in this paragraph allege that the employers with which Local 206 has had collective bargaining agreements are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and the amount of dollar volume in connection therewith, this respondent has no knowledge with which to form a belief and therefore denies the same.

V.

Respondents deny Paragraphs V and VI.

VI.

Admit Paragraph VII.

VII.

Respondent does not have sufficient knowledge or belief as to the truth or falsity of the matters contained in Paragraph VIII and therefore denies the same.

VIII.

Denies Paragraphs IX, X, XI, XII, XIII, XIV, XV, and XVI.

IX.

Respondent WAREHOUSEMEN LOCAL NO. 206 specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

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WHEREFORE, respondent WAREHOUSEMEN LOCAL NO. 206 having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE

JAMES LANDYE

Attorneys for Respondent

Warehousemen Local No. 206

STATE OF OREGON, }
COUNTY OF MULTNOMAH } ss.

I, JACK ESTABROOK, being first duly sworn, say that I am the Secretary of Respondent WAREHOUSEMEN LOCAL NO. 206 in the within entitled cause and that the foregoing Answer is true, as I verily believe:

JACK ESTABROOK
Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

JEWELL SLATER

Notary Public for Oregon

My Commission expires: 9/30/55

1412

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and
JOINT COUNCIL OF DRIVERS, No. 37

and

OFFICE EMPLOYEES INTERNATIONAL UNION, Local No. 11

ANSWER

Comes now JOINT COUNCIL OF DRIVERS, NO. 37,
and in answer to the complaint herein, admits, denies, and
alleges as follows:

I.

Admits Paragraph I except as to the exact amount of
revenue derived by the International from the local unions.
Respondent does not have sufficient information as to this
and therefore denies the same.

II.

Answering Paragraph II, Respondent admits that it is
a labor organization within the meaning of Section 2(5)
of the Act; admits that certain local Teamsters Unions
within the states of Oregon and Washington are affiliated
with the Joint Council, and admits that it has a principal
office in Portland, Oregon. Admits that it is formed pur-
suant to the Constitution of the International Union; that
its income is derived from dues paid by the local unions
affiliated with it; that it has at least one office clerical em-
ployee in its employ. Respondent denies each and every
other allegation contained therein.

III.

Respondent denies Paragraphs III, IV, V, VI, VII, VIII,
and IX.

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IV.

Respondent Joint Council of Drivers No. 37, specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

WHEREFORE, respondent JOINT COUNCIL OF DRIVERS NO. 37, having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE
JAMES LANDYE

Attorneys for Respondent
Joint Council of Drivers No. 37

STATE OF OREGON, }
COUNTY OF MULTNOMAH } ss.

I, JACK ESTABROOK, being first duly sworn, say that I am the Vice President of Respondent, Joint Council of Drivers No. 37, in the within entitled cause and that the foregoing Answer is true as I verily believe.

JACK ESTABROOK
Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

JEWELL SLATER
Notary Public for Oregon
My Commission expires: 9/30/55

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write In This Space

Case No. 36-CA-648

Date Filed 8/19/54

Amended 9/13/54

Compliance Status Checked By: /s/ mk

1. Employer Against Whom Charge Is Brought

Name of Employer Please see attached sheet

Address of Establishment (Street and number, city, zone, and State) Int'l—100 Indiana Ave. N. W., Washington, D. C.; Security Plan Off.—1020 N.E. Third Ave., Portland 12, Oregon

Type of Establishment (Factory, mine, wholesaler, etc.)
Labor union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) (3) (4) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named employers, by their officers, agents or representatives, on or about August 13, 1954, discharged employee Marion Henry and on or about August 16, 1954, discharged employee Mary Ermenace because of their membership in and activities on behalf of Office Employees' International Union, Local No. 11; because of their refusal to support Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; because of their having engaged in concerted activities within the meaning of Section 7 of the Act; because they had announced they would honor subpoenas of the Board requiring them to testify at a hearing being conducted in Case No. 36-CA-410 wherein Local No. 223 was named as a dominated union and would testify truthfully therein.

The above-named International and John J. Sweeney prior to the hearing in Case No. 36-CA-410 further attempted to dissuade employees from honoring Board subpoenas and from testifying in the aforementioned Board hearing and attempted to induce prospective witnesses to commit perjury.

The above-named Security Office and Earhart, on or about August 23, 1954, and at all times since, refused to recognize and bargain with the above-named Local No. 11 as the collective bargaining representative of their non-supervisory employees.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employees International Union, Local No. 11

4. Address (Street and number, city, zone, and State)
1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit

(1415)

(To be filled in when charge is filed by a labor organization)
Office Employees International Union

6. *Address of National or International, if any* (Street and number, city, zone, and State) 707 Continental Building, 1012 - 14th Street, Washington 5, D. C.

Telephone No. Ex 3-4464

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER

Secretary-Treasurer

Date September 13, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

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NAME OF EMPLOYER: (From previous page)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL, and its agent, John J. Sweeney, and Oregon Teamster Security Plan Office and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund.

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IX A.

The following unit is now and, at all times hereinafter alleged, was an appropriate unit within the meaning of Section 9 (b) of the Act:

All office and clerical employees in the Teamster Security Plan Office, Portland, Oregon, administered by William C. Earhart, excluding supervisors as defined in the Act.

IX B.

Office Union is now and, at all times since on or about July 14, 1954, has been the collective bargaining representative of a majority of Respondents Security Office and Earhart's employees in the unit described in paragraph IX A, above, and by virtue of Section 9 (a) of the Act, has been and now is the exclusive representative of all employees of Respondents Security Office and Earhart in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IX C.

On or about July 27, 1954, Office Union notified Respondents Security Office and Earhart of its claim to represent a majority of their employees and requested that said Respondents bargain with it. On or about August 10, 1954, Office Union filed with the Board a petition for certification as the collective bargaining representative of the employees in the unit described in paragraph IX A, above. On or about August 18, 1954, Office Union demanded recognition of Respondents Security Office and Earhart in the unit described in paragraph IX A, above, and offered to submit documented proof that it represented a majority of the employees in said unit, whereupon Respondents Security Office and Earhart on or about August 23, 1954, declined to recognize Office Union until it was certified by the Board.

IX D.

By declining to recognize Office Union, as set forth and described in paragraph IX C, above, after having discharged Henry and Ermence, as set forth and described in paragraphs VIII and IX, above, which discharges were after notice of Office Union's representation claim, as set forth and described in paragraph IX C, above, Respondents Security Office and Earhart have refused to bargain in good faith with Office Union as the representative of their

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employees in the appropriate unit set forth in paragraph IX A, above, and thereby have engaged in, and are now engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND
TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS
LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND
MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, Affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11
ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
AFL

and

LOCAL No. 223

Answering the Amended Consolidated Complaint herein,
Respondents International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, and Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, admit, deny and allege as follows:

I.

Answering Paragraph I, they admit that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called Respondent International, maintains its principal office in Washington, D. C.; that at all times referred to in the Consolidated Complaint it has been a labor organization within the meaning of the Act; and deny all other allegations of said Paragraph.

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II.

Answering Paragraph II, Respondents admit all allegations thereof except that many of the companies with which Local No. 223 has collective bargaining agreements are engaged in commerce within the meaning of the Act, all of which allegations concerning this matter Respondents deny.

III.

Answering Paragraph IV, these Respondents admit all allegations thereof except that Warehousemen's Local No. 206 is subject to the control of Respondent International; and except that many of the companies with which said Local has collective bargaining relationships are engaged in commerce within the meaning of the Act which allegations these Respondents deny.

IV.

They deny each and every allegation of Paragraphs V and VI.

V.

They deny each and every allegation of Paragraphs VIII, IX.

VI.

Answering Paragraph X, they deny any knowledge or information sufficient to form a belief concerning the same.

VII.

They deny each and every allegation of Paragraphs XI, XII, and XIII.

VIII.

Answering Paragraphs XIV, these Respondents deny any knowledge or information sufficient to form a belief concerning the same.

IX.

They deny each and every allegation of Paragraphs XV and XVI.

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WHEREFORE having fully answered the Consolidated Complaint herein, these Respondents ask that the same be dismissed as to them and each of them.

SAMUEL B. BASSETT

Samuel B. Bassett

Attorney for the Respondents

STATE OF OREGON

COUNTY OF MULTNOMAH

} ss.

JOHN J. SWEENEY, being first duly sworn on oath, deposes and says that he is one of the Respondents above-named and the Trustee of Local No. 223; that he has read

the foregoing Answer; knows the contents thereof, and believes the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER

Notary Public for the State of Oregon
My Commission Expires: 9/30/55

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND
JOINT COUNSEL OF DRIVERS, No. 37
and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11
ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Answering the Complaint herein, Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America admits, denies and alleges as follows:

I.

Answering Paragraph I, this Respondent admits that it maintains its principal office in Washington, D. C.; that it at times referred to in the Complaint has been a labor organization within the meaning of the Act; and denies all other allegations of said Paragraph.

II.

Answering Paragraph II, it admits all allegations thereof except that Joint Council of Drivers, No. 37 was or is subject to the control of this Respondent, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which allegation it denies.

III.

Answering Paragraph IV, this Respondent denies each and every allegation thereof.

IV.

This Respondent denies each and every allegation of Paragraphs VI, VII, VIII, and IX.

WHEREFORE having fully answered the Complaint herein, this Respondent asks that the same be dismissed as to it.

SAMUEL B. BASSETT

Samuel B. Bassett

Attorney for the Respondent

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STATE OF OREGON

COUNTY OF MULTNOMAH

} ss.

JOHN J. SWEENEY, being first duly sworn on oath, deposes and says that during all of the times referred to in the Complaint herein he was Trustee of Teamsters Local No. 223 and General Organizer appointed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that he is authorized to make this verification for and on behalf of said International Union; and that he has read the foregoing Answer,

knows the contents thereof, and believes the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER

Notary Public for the State of Oregon
My Commission Expires: 9/30/55

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS
AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY
PLAN OFFICE, AND WILLIAM C. EARBART, ADMINISTRATOR
THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION

FUND
and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11
ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

JOHN J. SWEENEY

Answering the Complaint herein, Respondents International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and John J. Sweeney, admit, deny and allege as follows:

I.

Answering Paragraph I, they admit that the International Brotherhood of Teamsters, Chauffeurs, Warehouse-

men and Helpers of America, hereinafter called Respondent International, maintains its principal office in Washington, D. C.; that at all times referred to in the Complaint it has been a labor organization within the meaning of the Act; and deny all other allegations of said Paragraph.

II.

Answering Paragraph II, they admit that at all times mentioned in the Complaint Respondent John J. Sweeney has been a paid representative of Respondent International and deny all of the allegations of said paragraph.

III.

Answering Paragraph III, they admit the first paragraph thereof and deny any knowledge or information sufficient to form a belief concerning the allegations of the second paragraph thereof.

IV.

Answering Paragraph IV, they admit that Respondent International, at all times mentioned in the Complaint, was an employer and they deny all of the allegations of said Paragraph.

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V

They deny each and every allegation of Paragraph V.

VI.

Answering Paragraph VI, they deny any knowledge or information sufficient to form a belief concerning the allegations thereof.

VII.

They deny each and every allegation of Paragraphs VII,

VIII, IX, IX-A, IX-B, IX-C, IX-D, X, XI, XII, XIII, and XIV.

WHEREFORE having fully answered the Complaint, these Respondents ask that the same be dismissed as to them and each of them.

SAMUEL B. BASSETT

Samuel B. Bassett

Attorney for the Respondents

STATE OF OREGON

COUNTY OF MULTNOMAH } ss.

I, JOHN J. SWEENEY, being first duly sworn, depose and say that I, as one of the above-named Respondents, have read the foregoing Answer, know the contents thereof, and believe the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER

Notary Public for the State of Oregon

My Commission Expires: 9/30/55

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS

BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

Case No. 36-CA-637

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

Case No. 36-CA-638

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Local No. 223,
GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

Case No. 36-CA-639

and

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Case No. 36-CA-647

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37

Case No. 36-CA-648

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
 WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
 and its AGENT, JOHN J. SWEENEY,
 and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
 and WILLIAM C. EARHART, ADMINISTRATOR THEREOF,
 and of TEAMSTERS SECURITY ADMINISTRATION FUND
 and
 OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

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Robert E. Tillman, for the General Counsel.

Bailey & Lezak, by *Paul T. Bailey*, of Portland, Oreg., for
 the charging party.

Bassett, Geissness and Vance, by *Samuel Bassett*, of Seat-
 tle, Wash., for Respondents International, Sweeney, and
 Local 223.

Richard R. Morris, of Portland, Oreg., for Security Fund
 and Earhart.

Anderson, Franklin and Landye, by *James Landye*, of Port-
 land, Oreg., for the other Respondents.

Before: *Martin S. Bennett*, Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This proceeding is brought under Section 10 (b) of the
 National Labor Relations Act, 61 Stat. 136, and is based
 upon separate charges duly filed by Office Employees Inter-
 national Union, Local No. 11, herein called Local 11, against
 the various Respondents named above in the respective
 cases.

Pursuant to said charges, the General Counsel of the
 National Labor Relations Board issued six complaints

against the respective Respondents. The original complaint, dated June 25, 1954, in Case 36-CA-410, as amended, alleged that on or after March 1, 1953, Respondent Teamsters Security Administration Fund, also known as Oregon Teamsters' Security Plan Office, and William C. Earhart, administrator thereof, herein referred to as Security Fund and Earhart, individually and jointly with Warehousemen Local No. 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 206 and the International respectively, had dominated, assisted, and contributed support to Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with said International, within the meaning of Section 8 (a) (1) and (2) of the Act.¹

Subsequent to the initial hearings on the above-described complaint, held on July 21 and 22, 1954, and discussed below, the General Counsel, relying upon interim developments, issued a group of additional complaints. These

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included a consolidated complaint dated August 13, 1954, in Cases 36-CA-637, 638, and 639, against four Respondents, the International, Local 206, Local 223, and Teamsters Building Association, Inc., herein called Building Association. That complaint, as amended, alleged (1) that Local 206, on or about June 10, 1954, discriminatorily terminated the employment of June Cook because of her activities in behalf of Local 11, within the meaning of Section 8 (a) (1) and (3) of the Act; (2) that Building Association dis-

¹ As will appear below, these complaints deal *inter alia* with the office employees of the various labor organizations identified as Respondents herein; these labor organizations are named as Respondents in their capacities as employers under Section 2 (2) of the Act. While that section excludes a labor organization from the definition of an employer under the Act, an exception to the exclusion provides that a labor organization is deemed to be an employer "when acting as an employer." Such is the case here. *Air Line Pilots Association*, 97 NLRB 929, 930, and *Raybestos-Manhattan, Inc.*, 80 NLRB 1208.

charged Irene Morcom² and Virginia Olstad on or about July 28 and 29, 1954, respectively, at the behest of Respondent International, because of their activities in behalf of Local 11 and because they honored Board subpoenas requiring their presence and testimony at the hearing in Case 36-CA-410 on July 21, 1954, within the meaning of Section 8 (a) (1), (3), and (4) of the Act; (3) that Local 223, as an employer, had interfered with the activities of its own employees and had dominated and contributed unlawful support to itself in its other capacity as a labor organization, within the meaning of Section 8 (a) (1) and (2) of the Act; and (4) that Respondent International, by its role in the foregoing activity, engaged in conduct violative of Section 8 (a) (1), (2) (3), and (4) of the Act.

The complaint in Case 36-CA-647, was issued on August 17, 1954, and alleged that Joint Council of Drivers, No. 37, herein called Joint Council, an organization formed pursuant to the Constitution of Respondent International, had together with Respondent International, discharged the above-named Irene Barnes on or about August 13, 1954, because of her activity in behalf of Local 11 and because she honored a Board subpoena requiring her appearance and testimony in Case 36-CA-410 on July 21, 1954, thereby engaging in conduct violative of Section 8 (a) (1), (2), (3), and (4) of the Act.

Another complaint, in Case 36-CA-648, issued on August 19, 1954, and named as Respondents the International and its agent, John J. Sweeney, together with Security Fund and its administrator, William C. Earhart. That complaint, as amended, alleged (1) that Respondent International and Respondent Sweeney in July 1954 attempted to dissuade employees from honoring Board subpoenas in Case 36-CA-410, to withhold information from the Board when testifying, and to perjure themselves, within the meaning of Sec-

² Morcom has since married and appears in the transcripts as Irene Morcom Barnes. She is so referred to herein.

tion 8 (a) (1) of the Act; (2) that employees Marian Henry and Mary Ermence were discharged by Security Fund on August 13 and August 16, 1954, respectively, pursuant to instructions from Respondent International, within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act; and (3) that Security Fund and Earhart had refused to bargain collectively with Local 11 as the representative of its employees in an appropriate unit, within the meaning of Section 8 (a) (5) of the Act.

On August 19, 1954, the Regional Director for the Nineteenth Region issued an order consolidating all of the above-entitled cases in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay. Copies of the various charges, complaints, orders consolidating cases and notice of hearing thereon were duly served upon the various Respondents who thereafter filed answers denying the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Portland, Oregon, on July 21 and 22, 1954, and between September 13 and 21, 1954, before the undersigned Trial Examiner,

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Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. All parties were represented; participated in the hearing; and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. Motions were filed by Respondents to sever the cases and were denied. *N. L. R. B. v. Seamprufe, Inc.*, 186 F. 2d 671 (C. A. 10), cert. denied 342 U. S. 813; *United Mine Workers, District 51*, 95 NLRB 547, 548, enf'd 198 F. 2d 389 (C. A. 4), cert. denied 344 U. S. 884; *Broadway Express, Inc.*, 108 NLRB No. 123; and *International Typographical Union* 87 NLRB 1418. Ruling was reserved on a motion by counsel for Respondent Locals to dismiss the complaints and it is hereby denied. At the close of the hearing the parties were given an opportunity

to argue orally and to file briefs. Oral argument was waived. The time for filing briefs was extended at the request of counsel for Respondents who, together with the General Counsel and Local 11 have submitted briefs. Motions to dismiss the complaints filed by certain of Respondents, on the ground that they are not engaged in commerce, are disposed of hereinafter.

The charging party has submitted a number of proposed conclusions. As to those relating to Cases 36-CA-637, 638, 639, and 647, Numbers 1, 3, and 8 are accepted; the remainder are rejected as being completely or partly unacceptable. As to those relating to Cases 36-CA-410 and 648, Numbers 1, 2, 3, 4, 9, and 10 are accepted; the remainder are rejected as being completely or partly unacceptable.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a national labor organization which maintains its principal office in Washington, D. C., and has 872 chartered locals in the United States, Alaska, Hawaii, Canada, and the Canal Zone. The International and its locals have a membership, as of July 31, 1954, of 1,204,477 members. It has in its employ, outside of Washington, D. C., 34 officers, representatives and organizers; this figure includes John J. Sweeney who was a general organizer for the International between February 1, 1953, and September 1, 1954, the period material herein, was therefore its agent, and who reported directly to a vice-president of the International; on September 1, 1954, Sweeney became Secretary-Treasurer and Director of the Western Conference of Teamsters, a division of the International. In the year ending December 31, 1953, the

International had a total revenue of \$6,587,327 of which \$5,755,232 represented remittances to its principal offices in Washington, D. C., from all of its locals of the per capita tax levied upon each member; also included in the larger figure was the sum of \$626,425 which represented a percentage of the initiation fee levied upon new members and remitted to the International offices in Washington, D. C., by the respective locals.³

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Local 206, affiliated with the International, has a membership of approximately 2,750; had receipts from dues, reinstatement and application fees, and fines during the year ending June 30, 1954, totaling \$156,839; and remitted per capita taxes in the amount of \$46,786. Local 223, affiliated with the International, has a membership of approximately 600; had receipts from the same sources during the year ending June 30, 1954, of \$32,468; and remitted per capita taxes in the amount of \$7,258.

Joint Council of Drivers, No. 37, is comprised of 23 Teamster locals, 21 in the State of Oregon, and 2 in the State of Washington, and is established pursuant to Article XV of the Constitution of the International which makes the formation of a joint council mandatory under certain specified circumstances. It has no by-laws of its own and operates under the constitution of the International. Its income in the year ending June 30, 1954, totaled \$177,645 based upon per capita taxes paid by its constituent locals, of which \$8,609 represented taxes from locals in the State of Washington.

Teamsters Building Association, Inc., an Oregon corporation, was incorporated in 1948 and all of its stock is

³ On the assumption that these totals include remittances to the International from those locals that may be located in the District of Columbia, the foregoing figures, insofar as they represent sums of money passing across State lines, should be reduced accordingly; it is apparent that such a reduction would be relatively slight and would not affect the conclusions that follow.

owned by six Teamster locals, including Respondent Local 206. It was formed as a device to get around certain restrictions on the owning of real estate by labor organizations; this device, utilizing a nonprofit corporation for such a purpose, is now permitted under Oregon law, in contrast to a prior flat ban on the owning of real estate. Its only function is to own and operate one office building in Portland, Oregon, known as the Teamsters Building, all of whose tenants, with one exception discussed below, are Teamster locals. Income of the corporation is derived almost entirely from the rent of building space to its tenants and, during the year ending June 30, 1954, this rental income totaled \$49,767. While desk if not office space, is provided for an International representative, the record does not disclose whether this service is paid for by the International. Building Association does not maintain a separate office of its own; its business affairs are conducted from the office of Joint Council 37 whose Recording Secretary, Clyde C. Crosby, was also President of the Association. The records of the Association are maintained partly in the Joint Council office and partly in the office of Teamsters Local 162; Crosby, at the time material herein, was also General Secretary-Treasurer of the latter organization which is not involved in this proceeding.

Teamsters Security Administration Fund is an entity whose administrator and managing agent is William C. Earhart. The fund is established as the result of collective bargaining agreements between the 23 Locals belonging to the Joint Council and approximately 2,000 employers located primarily in the State of Oregon, but including a small number in the surrounding States of Washington, Idaho, and Montana. These agreements provide for the establishment of health and welfare plans pursuant to Section 302 of the Act, and cover some 16,000 employees. The actual operating technique consists of a trust provided for in the collective bargaining agreement with trustees appointed, presumably in equal numbers by both parties to

the collective bargaining agreements. There are in all 18 such trust agreements behind Security Fund. All the trust agreements provide for the appointment of an administrator and Earhart, appointed to that post on April 1, 1954, administers all these trusts. He was the first full-time administrator, his predecessors since July 1950, the date of inception of the Fund, having been various Teamster officials who devoted a portion of their time to the post, apparently on a nonremunerative basis. Earhart's primary function is to operate an office known as the Teamsters Security Administration Fund which is indirectly financed, as follows, through funds paid into the respective trusts.

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Each of these trusts has purchased a health and welfare insurance policy for the employees it covers with the Occidental Life Insurance Company in Los Angeles, California. Contributions from the approximately 2,000 employers in the four States are sent to the administrator of the trusts, Earhart. The insurance premiums are substantially equal to the total contributions and are remitted monthly by Earhart, for the trusts, to the insurance company in Los Angeles. That company in turn remits four percent of the premiums to Teamsters Security Administration Fund for the sole purpose of maintaining an office in Portland and processing and paying claims under the health and welfare plans by drafts on Occidental. For the first 4 years of its operation, ending July 1, 1954, receipts of the trusts have averaged in excess of \$1,000,000 per annum. Premiums remitted to the insurance company for the month of June 1954 totalled \$178,266; in other words, premiums in excess of \$2,000,000 per annum are currently being remitted to the insurance company. An insurance company allowance to the Fund at four percent to operate the claims office is based upon the latter figure and is forwarded to the Fund by separate check from the Los Angeles office of Occidental.

Security Fund also does business, apparently for the sake of convenience, under the name of Oregon Teamsters' Security Plan Office; this name appears on its office door and on its letterhead. The Fund which exists for no purpose other than that stated above, rents and maintains offices in the building owned and operated by Teamsters Building Association in Portland, known as the Teamster building. As stated, all other tenants of that building are local unions or other divisions of the Teamster organization.

Conclusions

In considering the problem whether the various Respondents herein are engaged in commerce. I have been able to discover but one case where the Board exercised jurisdiction over a labor organization as an employer. *Air Line Pilots Association, supra*. That was a representation proceeding involving the employees of a labor organization which maintained offices in several cities throughout the United States. The Board found that "Congress intended that labor unions be treated like any other employer with regard to their own employees," and pointed out that "the Board normally assumes jurisdiction over enterprises which are multi-state in character"

The Board has recently revised its jurisdictional policies in a number of respects. While it is understandable, due to the paucity of such cases, that express standards have not been set up specifying the circumstances under which jurisdiction will be asserted over a labor organization as an employer, I believe that if jurisdiction is to be asserted herein, it must be done upon the basis of fitting the facts, as they apply to the various Respondents, into one of the formulae spelled out by the Board in its recent decisions. As will be apparent, those referred to in the case of *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, are germane herein. The Board there promulgated, *inter alia*, these standards:

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(a) That it would assert jurisdiction over an enterprise receiving goods or materials from out-of-State valued at \$500,000 or more per annum.

(b) That it would assert jurisdiction over an enterprise producing or handling goods and shipping such goods out-of-State, or performing services outside the State in which the enterprise is located, valued at \$50,000 or more per annum.

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(c) That it would assert jurisdiction over an enterprise other than retail which is operated as an integral part of a multistate enterprise, and (1) the particular establishment meets any of the foregoing as well as other standards set forth in the *Jonesboro* decision; or (2) the direct outflow of the entire enterprise amounts to \$250,000 or more per annum; or (3) the indirect outflow of the entire enterprise amounts to \$1,000,000 or more per annum.

Turning first to Respondent International, the record demonstrates that it maintains 872 locals in the United States, Alaska, Hawaii, Canada, and the Canal Zone. Its 1953 revenues, based upon per capita taxes and initiation fees received from its constituent locals, were in excess of \$6,000,000 and were forwarded by these locals to the International in Washington, D. C. As for the relationship between the International and its constituent locals, the provisions of the International Constitution demonstrates that the International and its locals constitute one integrated, closely-knit, and national organization, which is well within the logical meaning of the term "multistate enterprise," as used by the Board. These provisions are corroborated by the By-Laws of Local 206. It is also noteworthy that Local No. 223, under trusteeship, has no constitution or by-laws and that it operates under the International Constitution. Some of the provisions of the International Constitution are listed below:

(1) The General President of the International may appoint a temporary trustee "to take charge and control" the affairs of a local union whose affairs are not being conducted in accordance with the Constitution of the International.

(2) Said trustee is authorized to take full charge of the affairs of the local, to remove officers, and to appoint temporary officers during his trusteeship. As demonstrated in the present case, the power to appoint trustees is in fact exercised by the International, and a trustee, although described in the Constitution as "temporary," may enjoy a trusteeship lasting for a number of years. His duties, moreover, are to see that the Local functions under the International Constitution.

(3) Officers of a local suspended by a trustee are directed by the Constitution to turn over all funds, books, and property of the local to the trustee who, in turn, is directed to take possession of same.

(4) Said trusteeship does not come to an end until the General President of the International so directs.

(5) Charters are issued to local unions only upon the signing of a contract providing that upon revocation of the charter, "all books, documents, contracts, name, moneys, funds, and property shall belong to and shall be delivered over to the International union. . . ."

(6) Charters to locals may be revoked by the General President of the International when deemed necessary.

(7) Upon revocation or forfeiture of the charter of a local union, and upon its subsequent reorganization, the General Executive Board of the International has the power to exclude from membership in the new local persons responsible for the revocation or forfeiture of the charter.

(8) The General Executive Board has the power to deny membership in the International to applicants to any local union.

(9) The General Secretary-Treasurer shall "notify the local secretary to comply with the laws (of the International) and if he does not, he shall be removed from office for the second offense."

(10) Any local secretary-treasurer or business representative is required to be bonded. Upon his failure to obtain a surety bond satisfactory to the General Secretary-Treasurer of the International, he is automatically deprived of holding any office for which a bond is required. The General President or General Executive Board is empowered to suspend or revoke any local charter for failure to comply with these bonding requirements.

(11) Any organizer or officer of the International may be empowered by the General President or General Secretary-Treasurer of the International to audit the books of any local, and any local union officer refusing to turn over books and records to the delegated officer is subject to expulsion by the General Executive Board.

(12) When a local union secedes, disaffiliates, or dissolves, its records, property, and funds are to be delivered to the General President or his representative. All such property and funds are held in trust by the International until reorganization has been effected, but, if no reorganization is effected within 6 months, all properties and funds of the local become the property of the International.

(13) When a local union is on strike or has been subjected to a lockout, the General President determines whether or not benefits are to be paid as provided in the International constitution.

(14) A local union desiring to present a wage scale to an employer must, after obtaining approval of its joint council, forward a copy of same to the General President and obtain his approval before presenting it to the employer.

(15) No contract entered into between a local union and an employer is binding until it is approved by the General President of the International.

(16) Upon the filing of charges against a member or officer of a local, the General President may, in his discretion, immediately suspend such member or officer from membership or office.

(17) When the General Executive Board determines that a local union shall arbitrate a dispute with an employer, the local is directed to carry out this decision.

(18) Any local union not paying an assessment levied, under indicated circumstances, by the General Executive Board, shall be suspended.

(19) Any local union within the jurisdiction of a joint council is required by the International Constitution to affiliate with said council.

It is common knowledge that the degree of control of an international union over its locals and the extent of local autonomy vary greatly among labor organizations in direct ratio to their constitutional requirements and operating techniques. Under some circumstances, not present herein, it might well be argued that a designated local labor union is an entirely independent entity not completely or substantially subject to the wishes and control of its parent organization.

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It is clear, on the other hand, that the provisions of an international constitution may well subject a local to international control of a substantially complete and binding nature. Thus, it is significant in the present case that the International Constitution places the formation of a local, the revocation of its charter, its existence and property, and the very management of its affairs, under the close and controlled supervision of the International, as set forth

above in more detail. See Rose, *Relationship Of The Local Union To The International Organization*, Virginia Law Review, 843-780 (Nov. 1952) and cases cited therein, including *Operating Engineers v. Jones Construction Company*, 240 S. W. 2d 49 (Ky.); *Federation v. Office and Professional Workers*, 74 A. 2d 446, 449 (R.I.); and *Fitzgerald v. Abramson*, 89 F. Supp. 504 (S.D.N.Y.).

If, as is the case here, the International can strip a local of its property and of its right to conduct day to day operations, and even abolish it entirely, it becomes almost meaningless to discuss the separate existence of the local as an entity independent of the International. See *Chicago Typographical Union, et al.*, 86 NLRB 1041, 1045-7. See also *Hickey v. Stickel*, N. Y. Sup. Ct., decided Nov. 16, 1954, 35 LRRM 2167; *Low v. Harris*, 90 F 2d 783 (C. A. 7); *Brown v. Hook*, 79 C.A. 2d 781; *Davis v. I.A.T.S.E.*, 60 C. A. 2d 713, 141 P. 2d 486; and *Seslar v. Local 901*, (D. C. Ind.), 87 F. Supp. 447, rev'd on other grounds 186 F. 2d 403 (C. A. 7), cert. den. 341 U. S. 940.

I find, in view of all the foregoing factors present in this case that the International and its locals constitute integral parts of a multistate enterprise which falls within the purview of the formula laid down by the Board in the *Jonesboro* decision. Specifically, the direct outflow of the entire enterprise, namely, the movement of over \$6,000,000 per annum in funds from all of the locals to the International in Washington, D. C., is well in excess of the \$250,000 figure specified in that decision. I further find that the International and all of its locals, including Respondent Locals, are engaged in commerce within the meaning of the Act, and that it would effectuate the purposes of the Act to assert jurisdiction herein. See *Lonsford v. Burton*, Oreg. Sup. Ct., decided Feb. 24, 1954, 34 LRRM 2100; *Harker v. McKissock*, N. J. Sup. Ct. 81 A. 2d 480; *Fanara, et al. v. Teamsters, et al.*, N. Y. Sup. Ct., decided July 28, 1954, 34

LRRM 2714; and *Retail Clerks v. Westling*, Wash. Sup. Ct., 247 P. 2d 253.*

Turning to the Joint Council, here too the record warrants a finding that it is engaged in commerce within the meaning of the Act and that its operations fall within the Board's new formula on jurisdiction. It is clear from the International Constitution that a joint council is a creature of and an integral part of the multistate Teamster organization. Some of its provisions are as follows:

(1) The formation of joint councils is mandatory where three or more locals are located in one city.

(2) Locals are required to belong to these joint councils and to pay monthly dues to them.

(3) The joint councils adjust all questions of jurisdiction between locals.

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(4) Joint councils have authority to approve or disapprove of any strike, lawsuit or similar action contemplated by a local.

(5) Locals desiring to present a wage scale to employers must first submit a copy of same to its joint council.

(6) After local unions within the jurisdiction of a joint council affiliate with it, as directed by the International Constitution, they are directed to comply with the laws of the joint council as well as to obey its orders.

(7) When two local unions have a dispute concerning their jurisdiction, they are required to submit said controversy for determination to the joint council; a party

* It becomes unnecessary to determine whether the operations of this multi-state enterprise meet any of the other standards set forth in the *Jonesboro* decision. Similarly, although it appears that none of the locals involved herein, when considered separately, meet the direct outflow standards, I deem it unnecessary to treat with this problem in view of the foregoing findings.

aggrieved by the decision of the joint council may appeal to the International General President.

(8) Although not done pursuant to a constitutional provision, it is significant, in the present case, that Joint Council on March 5, 1954, saw fit to appoint International Representative Sweeney "to coordinate the activities of all departments of the Joint Council and its organizers." This actually constituted, as the record demonstrates, an attempt to set up Sweeney as *de facto* Secretary of Joint Council in the place of one Ward Graham, who was substantially relieved of his duties, although not expressly so.

I find, in view of the foregoing, that the Joint Council herein, whose membership is composed solely of Teamster locals throughout the State of Oregon and in five and one half counties in the State of Washington, constitutes an integral part of the Teamsters multistate enterprise, is engaged in commerce, and that it would effectuate the purposes of the Act to assert jurisdiction over its operations.

Building Association contends that it has no connection with the International, and it is true that there is no specific reference to it as such in the International Constitution. However, as found, all of the stock in Building Association is owned by six Teamster locals which are very specifically, as set forth above, subject to the control of the International. This control, includes the right to appoint trustees over said locals. If, as here, the International may appoint an International representative as a temporary trustee to take charge of and control the affairs of a local union, and, as demonstrated, these trusteeships can and do last for years, it logically follows that by its demonstrated control over the locals, the International can readily exert similar control over the Building Association, which is entirely owned and controlled by said locals. See *Albert Evans, Trustee, et al.*, 110 NLRB No. 122; and *Local No. 600*, 107 NLRB No. 63. Moreover, it is noteworthy in the present case, that Building Association has no office of its own and

conducts its business operations from the office of the Joint Council. I find, therefore, that Building Association is a salient and intrinsic part of the Teamster organization and is engaged in interstate commerce.

I further find that the facts present herein bring the case within the Board's recent pronouncement as to the circumstances under which it will assert jurisdiction over office buildings. In *McKinney Ave. Realty Company (City National Bank)*; 110 NLRB No. 69, the Board held that it would assert jurisdiction over an office building operation only when the employer which owned or leased and which operated the office building was itself otherwise engaged in interstate commerce, and also utilized the building primarily for its own offices. In the present case, the office building is owned by six locals of the Teamster organiza-

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tion and is used exclusively, save for Security Fund, for the use of its own offices by Teamster locals which have been found to be engaged in commerce. Indeed, as will appear below, Security Fund, which is engaged in interstate commerce, is the operating mechanism for a number of health and welfare trusts, at least one-half of whose trustees are appointed and controlled by Teamster locals. I find that it would effectuate the purposes of the Act to assert jurisdiction over the operations of Building Association.

Turning to Security Fund, it is readily apparent that at least on one ground, it falls within the purview of the formula laid down in the *Jonesboro* decision. In view of the fact that Security Fund ships in excess of \$2,000,000 per annum in funds to California, well in excess of the \$50,000 per annum standard, it falls within the formula. I deem it unnecessary to determine whether it meets any of the other standards promulgated by the *Jonesboro* decision. I find, therefore, and totally aside from the fact that

Section 302 of the Act already asserts Federal jurisdiction over such plans, that Security Fund is engaged in commerce and that it would effectuate the purposes of the Act to assert jurisdiction herein. *United Marine Division, ILA v. Essex Transportation Co.*,—F. 2d—(C. A. 3) decided 11/3/54; *Polish National Alliance v. N. L. R. B.*, 322 U. S. 643, 648; *N. L. R. B. v. Phoenix Mutual Life Ins. Co.*, 167 F. 2d 983 (C A 7), cert denied, 335 U. S. 845; *N. L. R. B. v. Tri-State Casualty Insurance Co.*, 188 F. 2d 50 (C. A. 10); *Oklahoma State Union, et al.*, 92 NLRB 248; and *Professional & Business Men's Life Insurance Co.*, 108 NLRB No. 29.⁵

II. THE LABOR ORGANIZATIONS INVOLVED

I find that Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in its capacity as a labor organization, and Office Employees International Union, Local No. 11, are labor organizations admitting to membership the employees of Respondents.

III. THE UNFAIR LABOR PRACTICES

A. Introduction and background

This proceeding originally involved one relatively simple complaint in Case 36-CA-410. That complaint contained allegations of unlawful assistance and domination of a labor organization by Security Fund and Local 206, in 1953. Hearings were duly held in the matter on July 21 and 22, 1954, and were duly recessed to August 17 in order to enable the General Counsel to more precisely identify the

⁵ Although it would appear that Security Fund is in the insurance business as an agent of Occidental Insurance Company because it is paid directly by Occidental to process and pay claims under the insurance contracts between Security Fund and Occidental, and because travelling auditors for Occidental regularly audit the drafts and claims files in Portland, I deem it unnecessary to pass upon whether this business arrangement *per se* places Security Fund in commerce.

entity known as Security Fund. During the recess substantially all of the more serious conduct complained of by the General Counsel in the other cases took place, save for one earlier discharge in June. This alleged conduct involved, *inter alia*, five discharges among the 23 workers in

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the Teamsters Building in Portland, Oregon, for union activity and/or honoring Board subpoenas on July 21 and 22, 1954, interference with the processes of the Board, and a refusal to bargain. These new allegations, together with the original allegations, were ultimately litigated before me in hearings held, as stated, from September 13 to 21, 1954.

Initially, a brief description of the situs of the alleged unfair labor practices may be helpful. All of the employees involved in this proceeding work in a small Portland office building, known as the Teamster Building. As heretofore set forth, this building houses only organizations connected with the Teamster organization, specifically, a number of Teamster locals, Joint Council, and Security Fund, at least one-half of whose trustees are Teamster designees and in some cases Teamster officials as well; in addition, desk or office space in the building was assigned to John Sweeney, an International representative of Teamsters at the time material herein. These various organizations employed a total of approximately 23 office clericals and the five discharges alleged herein to be discriminatory were in that group. Four of the discharges took place relatively close together in point of time; in fact, two occurred on the same day, although carried out by different employers.

For some years, Local 11 had traditionally represented the office employees in the various offices of the Teamster Building; as they had the office employees of other AFL affiliates in the area. Written contracts were first executed in 1952 and expired in April of 1953. Negotiations early in 1953 between Local 11 and the various Teamster organiza-

tions in Portland made no progress, chiefly because of a shifting of responsibility between International Representatives Sweeney and Clyde Crosby, then General Secretary-Treasurer of Local 162, President of the Building Association, and Recording Secretary of Joint Council 37 whenever Secretary-Treasurer James Beyer of Local 11 attempted to negotiate with one or the other.

Specifically, as Beyer credibly testified, Crosby, after originally delaying meetings, at a later date informed Beyer, on the one hand, that the question of representation was an International problem and that International Representative Sweeney would represent the various Teamster organizations in collective bargaining. On the other hand, Sweeney, when contacted by Beyer, informed him it that it was a local problem. Sweeney also raised the possibility that the office workers would be taken into a Teamster local, it being Teamster policy to do so. It is fully understandable therefore, in view of this shifting of responsibility, that negotiations broke down early in July of 1953. In fact, the building was picketed by Local 11 during a 2- to 3-week period late in July and early in August of 1953, apparently with little effect.

B. Case 36-CA-410

The gravamen of this complaint, the original one herein, is directed to conduct taking place in 1953, allegedly violative of Section 8 (a) (1) and (2) of the Act. Although reference is made to this conduct being instigated and directed by the International, only Local 206 and Security Fund are named as Respondents. They are alleged to have contributed support to, to have assisted, and in fact to have dominated Local 223. It may be noted that as of approximately January 1, 1953, Local 223 had no representation among the office employees of the Teamster building. However, by July, and after the conduct detailed below, all but two or three of the approximately 23 girls in the building were

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initiated therein.

Turning first to Security Fund, the record demonstrates that Mary Ermence entered the employ of Security Fund in 1950 as claims manager, and was promoted to the position of office manager in January of 1953. There was no full-time paid administrator of Security Fund in the picture until April 1, 1954, when William Earhart was hired for that post. Prior thereto, various individuals, all connected with Teamster organizations in the building or in the area, served as administrators or co-administrators on a part-time and apparently unpaid basis. The complement of office personnel was five or six early in 1953, although it gradually increased until, at the present time and particularly after the employment of Earhart, the number is approximately ten. Prior to April 1, 1954, and the advent of Earhart, Ermence hired and trained employees and also directed them in the performance of their duties. She used the titles of office manager or director and signed official correspondence in such a manner. I find, in view of the foregoing, that during 1953 and prior to April 1, 1954, Ermence was a supervisor within the meaning of the Act.⁹

As heretofore found, Local 11 was the collective bargaining representative of the employees of Security Fund early in 1953 pursuant to a 1952 agreement which expired on or about April 1, 1953, as the result of a notice to terminate from Local 11.⁷ Late in February or early in March of 1953, International Representative Sweeney asked Ermence, as

⁹ The subsequent discharge of Ermence on August 16, 1954, and the question of her supervisory status at that time, is treated below in the discussion relating to Case 36-CA-648.

⁷ Two contentions of Respondents may be disposed of at this point. They contend that (1) Local 11 had theretofore enjoyed an unlawful degree of union security, and that (2) Local 11 unlawfully compelled its own office employees to belong to it. As to (1), this contention, assuming it to be true, is no defense to subsequent unlawful conduct by any of the Respondents herein. As to (2), the processes of the Board are available to litigate this contention, if it be correct and meritorious.

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the latter testified, to ascertain whether the employees of Security Fund wished to join a Teamster organization. Some time in April Ermence mentioned this talk to Clyde Crosby, an officer of Joint Council, president of Building Association, and a trustee of certain of the trusts behind Security Fund. Crosby assured her that it would be desirable for the office employees of Security Fund to join a Teamster organization. Thereupon, Ermence spoke to the group of office workers under her supervision. She informed them that it would be a "good thing" for them to join a Teamster organization; that Local 11 would never be able to negotiate another agreement with Security Fund; and that the Teamster officials had said "they would give us possibly a pay raise and better working conditions."

During May of 1953, Sweeney asked Ermence if she was prepared to distribute applications for membership in Teamsters and she agreed to do so. Either then or at another talk around the same time, Sweeney informed her that membership in Teamsters would result in pay raises and a 7½ hour work day. Later in May, Sweeney brought a group of applications to the Security Fund office, gave them to Ermence, and told her to distribute them among the girls "she was sure of." The applications bore both the name of the International and Local 223 in the caption. Local 223, it may be noted, had not theretofore represented office workers as such.

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As a result, during the latter part of May and immediately after obtaining the applications, Ermence passed them out to a number of girls, all apparently employees of Security Fund. She told the girls that these were applications to join Teamsters, to sign them if they wished, and to return them to Ermence. A number of the girls signed them, Ermence witnessed their signatures, and the applications were taken into custody by Ermence. In fact, on June 1, Ermence personally signed an application and had

it witnessed by one of the girls in the Security Fund office. Ermence then put the signed applications, of which six were introduced in evidence, into a folder. She proceeded to Sweeney's office in the Teamster Building, handed him the folder, and stated, "Here are the applications." Sweeney accepted the folder and thanked Ermence. Some time thereafter, the girls, including Ermence, were notified by Sweeney to appear at an initiation meeting; it appears that other female employees of the building also were present. The group was initiated into the Teamster organization in the presence of Sweeney and Crosby.

The testimony of various of the employees in the Security Fund office supports that of Ermence. Thus, Dorothy Carlisle, the widow of a former president of Teamster Local 162, was an employee of Security Fund until June of 1953 when she was discharged by Ermence. Carlisle credibly testified that approximately in March of 1953, Ermence spoke to the assembled employees of Security Fund at an office meeting and stated that the Teamster organization was considering establishing a local union to take in the office workers in the building; that an agreement would be drawn up and submitted to the employees; and that the employees would be given a chance to decide whether or not they preferred to transfer from Local 11. Ermence further stated on this occasion that "If we knew which side our bread was buttered on, it would behoove us to make the wise choice." This, I find, was manifestly a reference to the fact that at least one half of the trustees behind their employer, Security Fund, were appointees of Teamsters and presumably Teamster controlled, particularly in view of the official connection of at least some with Teamster organizations. Carlisle testified that she never informed Ermence that she wished to join a Teamster organization, that it was Ermence who introduced the topic, and that it was raised by Ermence at two of the office meetings of Security Fund employees.

Similar support of the testimony of Ermence is furnished by Gloria Latham who worked for Security Fund from November 1951 until January 1954 and who did join Local 223. She credibly testified that at an office meeting held early in May of 1953, Ermence informed the assembled employees that the Teamster organization would offer them a program, and it was up to the employees to decide whether they preferred a Teamster union or Local 11. Ermence also stated that "if we knew what side our bread was buttered on that we would join the Teamsters." One or two weeks later, Ermence distributed Teamster application blanks among the employees and informed them that it was for them to decide. It appears that Ermence, on this occasion, according to Latham's testimony on cross examination, stated that the employees would sign the applications if they knew "what side our bread's buttered on." I find here as well that this was a manifest reference to the economic power of Teamsters over the employees of Security Fund.

Marian Henry, an employee of Security Fund from May 1952 until her discharge on August 13, 1954, discussed hereinafter, further corroborated the testimony of Ermence. She credibly testified that in March of 1953 she belonged to Local 11, but that in April Ermence introduced her to the concept of Teamster representation. Thus, Ermence, on that occasion, summoned Henry to her desk,

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stated that they did not have a satisfactory setup with Local 11, and asked how Henry felt about joining a Teamster union. Henry responded that this would defeat the purposes of collective bargaining because the latter would be a "puppet union." Ermence replied that the Teamsters had been good to them and that they would enjoy many more benefits than under Local 11. Henry then asked, "Is it a must that we join the Teamsters Union?" Ermence merely smiled and shrugged her shoulders. Henry replied that she

understood the situation. I find, under the foregoing circumstances, that Ermence by her conduct, in response to Henry's question, indicated that it was a "must." In the early part of June, Ermence handed a Teamster application to Henry, asking her to fill it out and return it to Ermence if she wished to. Henry promptly obliged. Some weeks thereafter, Henry was initiated into the Teamster organization, after being instructed earlier that day by Ermence that there would be a meeting and that she "was requested to attend."

Moreover, even one witness called by Respondents, Patricia Schlat, further corroborated the testimony of Ermence. She admitted that she had been a dues paying member of Local 223 since July of 1953; that Ermence on an unspecified occasion prior to October 1953, but apparently during this period under consideration, had called her in to her, Ermence's, office; and that Ermence then told her that the other girls were joining Local 223 and that if they did "I want you to."

In appraising the foregoing conduct, I base no findings of an unfair labor practice upon what Ermence may have been told by Sweeney or Crosby, those aspects of her testimony being set forth to show how the Teamster campaign came about. The decisive factor is that Ermence, clearly a representative of management, engaged in this conduct. Nor is it of any import that Ermence may not have been personally overjoyed at the prospect of having Teamsters as the collective bargaining representative of the employees of Security Fund. The simple answer is that Ermence was regarded, and properly so, by the office employees of Security Fund as their supervisor and in fact their only direct supervisor.

Sweeney testified that Ermence, in May 1953, had asked him for the Teamster application blanks, that he did not give her the blanks, that he did tell her to help herself to a bunch of cards on his desk, and that she never furnished

him with any signed applications. However, the record supplies no logical motive for Ermence, absent outside influence, to have attempted to swing employees from Local 11 to Teamsters. Her testimony is supported by that of Virginia Wilson, former business representative of Local 11 who, in April of 1953, was told by Ermence that the girls had been instructed not to join Local 11; moreover, Ermence, on this occasion, referred Wilson to Sweeney. Likewise, Sweeney admitted handing out a Teamster application blank in May to Virginia Olstad, the telephone operator for Building Association, as Olstad testified, telling her that all the girls in the building were joining Local 223. In fact, Sweeney's own testimony in several instances demonstrates this; thus, for example, in June of 1953 at the initiation meeting, he informed the girls that there would be an office workers local for Teamsters which would organize wherever it could in the area and that he, Sweeney, was merely doing what he was being paid to do.

Respondents stress the fact that in August of 1953, Ermence furnished an affidavit to the General Counsel, in connection with the original case, wherein she made some statements of a more innocuous nature than her testimony herein and in part contrary thereto. Ermence testified that

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she had deliberately withheld certain information and shaded facts on the occasion of her affidavit because she feared the loss of her position if she furnished an affidavit damaging to Teamsters, that she anticipated that Sweeney would await her return from the local office of the General Counsel and would inspect her copy of the affidavit, and that Sweeney did precisely that. She further testified that she was determined not to perjure herself herein.

I have given considerable thought to the question of the credibility of Ermence who withstood an extensive cross-

examination and impressed me as an honest and forthright witness. I am impressed by the fact that her testimony is corroborated by that of Carlisle and Latham both of whom were referred to in the affidavit; in this respect, it is noteworthy that Carlisle had been discharged from Security Fund by Ermence. Moreover, as noted, Ermence's testimony herein attributes conduct to Sweeney which was of a pattern with conduct which he admittedly engaged in with at least one other building employee. In addition, it may be noted that the brief of Security Fund concedes that there is evidence that Ermence "assisted" Local 223 prior to August 1, 1953. I have therefore credited the testimony of Ermence.

Ermence, the only full time management representative then employed by Security Fund, commenced and carried out a campaign to transfer the affiliation of the office employees of Security Fund to Teamsters. I find that by the conduct of Ermence in soliciting membership for Teamsters passing out applications for membership therein, picking up signed applications for membership, uttering thinly-veiled threats of economic reprisal for failure to sign up with Teamsters, and promising increased benefits if the employees would affiliate with Teamsters, Respondent, Security Fund, also known as Security Plan Office, has contributed unlawful support to Teamsters and Local 223, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) and (2) thereof. *N. L. R. B. v. Wemyss*, 212 F. 2d 465.

The record does not warrant a finding that this conduct by Security Fund constitutes domination of Local 223. In fact, it would appear far more likely that Local 223 dominated Security Fund, in view of the fact that at least one-half of the trustees of Security Fund are Teamster appointees and that at least some are Teamster officials. Moreover, the record amply demonstrates the influence of Teamsters over Security Fund, a not unlikely situation

inasmuch as it is common knowledge that a health and welfare plan is a benefit commonly sought by labor organizations from employers who, in most cases, have not volunteered such benefits.

Similarly, I see no merit to the contention of the General Counsel that a remedy of disestablishment of Local 223 is in order. Contrary to his position, I see no reason why Local 223 cannot represent Teamster employees other than its own employees. In addition, inasmuch as the conduct under consideration herein took place prior to the appointment of Earhart as administrator of Security Fund, I find that he has not engaged in these unfair labor practices, although, as will appear, the proposed remedy will involve him. See *N. L. R. B. v. Mastro Plastics Corp.* 214 F. 2d 462 (C. A. 2); *N. L. R. B. v. Thayer Co.*, 213 F. 2d 748 (C. A. 1); *N. L. R. B. v. Polynesian Arts*, 209 F. 2d 846 (C. A. 6); *Marathon Electric Manufacturing Corp.*, 106 NLRB No. 199; *Radio Industries, Inc.*, 101 NLRB 912; *Knickerbocker Plastic Co.*, 96 NLRB 586; *Boss Overall Cleaners*, 100 NLRB 1210, 1237; and *Monolith Portland Cement Co.*, 94 NLRB 1358.

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Turning to Local 206, the facts are not intricate. June Cook, whose discharge is hereinafter discussed, was one of two female clericals in the employ of Local 206. She had been a member of Local 11 since 1947. Cook testified that in June of 1953 Financial Secretary Jack Estabrook of Local 206 spoke to her and said that he was on the spot because someone had informed International Representative Sweeney, who was also trustee of Local 223, that Cook had refused to join a Teamster local. Cook denied this, pointing out that some years before she had belonged to a Teamster organization in the area during a period of temporary employment and was on a withdrawal card from that organization. Later that day, Estabrook brought applications for membership in Teamsters to the office; he

gave one to Cook and one to the other office clerical, a Mrs. Crosby who is the wife of Clyde Crosby. Estabrook stated that if the girls had no objections they were to turn them in to Sweeney. Later that day Cook turned in a completed application to Sweeney at a time when he was in the company of Clyde Crosby.

Mrs. Crosby was not called as a witness herein and Crosby did not testify concerning the incident. Estabrook substantially corroborated the testimony of Cook. He testified that the applications had been given him by an officer of Local 223 and that he had given the applications to his two office clericals. He allegedly informed them that it was up to them to sign and that he did not care one way or the other. In this last respect, his testimony differs somewhat from that of Cook, set forth above, as well as from his subsequent testimony, fully understandable, that, as a union official he was always ready to sign up someone for the Teamster organization and that he would "go along with the rest of the boys in the Teamster Building any time." Here, as elsewhere, the testimony of Cook, a straightforward witness, is credited. I find that Financial Secretary Estabrook, as Cook testified, passed out Teamster application blanks to his two office employees and told them to sign if they had no objection. I find that this statement, viewed in its proper perspective under the circumstances, was tantamount to a direction from their employer to sign the cards.

The right of employees under Section 7 of the Act to join or assist labor organizations of their own choosing is effectively implemented by Section 8 (a) (1) and (2). These provisions forbid employers from interfering with or supporting labor organizations of their employees. They also forbid the foisting of a labor organization of the employer's choice upon employees who are not insensitive to the disadvantages that may flow from the choice of a representative opposed by their employer. I find that Local 206, as did Security Fund shortly before, has by the foregoing

conduct contributed assistance and support to Local 223, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) and (2) thereof. See *N. L. R. B. v. Wemyss*, 212 F. 2d 465 (C. A. 9). As in the case of Security Fund, I find that this did not constitute domination of Local 223.

C. The Discharges

1. INTRODUCTION; THE 1954 ORGANIZATIONAL CAMPAIGN

The remaining cases involve alleged unfair labor practices largely occurring during a period of approximately 2 months in 1954. As stated, the major portion of these allegations relates to a group of five discharges in the Teamster building, four of them between July 29 and August 16, 1954. This latter group lends itself to initial treatment and I shall proceed to consider their cases at this point.

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As heretofore set forth, Local 11, the traditional bargaining representative for the office employees of the Teamster building, was unable in 1953 to pin down a responsible official of the Teamsters to a bargaining session, let alone a new contract, despite an unsuccessful strike during portions of July and August of that year. Thereafter, many of the employees of the building signed up with Local 223 of Teamsters and the circumstances, at least with respect to employer interference, by Security Fund and Local 206, have been set forth above.

In 1954, Local 11 again renewed its organizational efforts, its chief protagonist in the building being Marian Henry, an office employee of Security Fund who was openly dismayed at the possibility of Local 223 becoming the bargaining representative of the building clericals. In June of 1954, Henry, who had previously acted as a spokesman for the office girls of Security Fund, visited the Portland

office of the Board to ascertain whether or not a representation election was in the offing for the office clericals of the building. She apparently ascertained that no representation petitions were in the picture and determined that a petition should be filed by Local 11.

During the last week of June, she circulated among the 23 girls of the building and obtained 8 signatures to a petition asking the Board to hold an election to determine whether the employees wished to be represented by Local 223 of the Teamsters or by Local 11. Thereafter, early in July, Henry obtained blank authorization cards from Secretary-Treasurer James Beyer of Local 11 and also circulated them throughout the building. During July, and prior to the first hearing herein on July 21, 1954, she obtained 13 signed cards designating Local 11 as bargaining representative, primarily from office employees of Security Fund. She also, during the first 2 weeks of July, obtained dues for Local 11 from 14 employees in the building.

The original hearings in Case 36-CA-410, based upon charges filed by Local 11, were held on July 21 and 22. The General Counsel subpoenaed six girls, all office clericals in the Teamster building, to appear on July 21. All six appeared on that date; they were Carol Wagner, Irene Manning, and the girls ultimately discharged between July 29 and August 16 who are involved herein, namely, Virginia Olstad, Irene Morcom Barnes, Marian Henry, and Mary Ermence. The General Counsel, on July 21, then excused the first two of the six, subject to later call, but directed the other four to return to the hearing on July 22. The four girls duly appeared at the hearing on that date. These four girls were subsequently discharged, Olstad by Building Association on July 29, Barnes by Joint Council on August 13,* Marian Henry on August 13 and Mary Ermence on

* It is also alleged that Barnes was discriminated against by Building Association on July 28 or 29 when she was deprived of certain part-time work she had performed for that organization as well.

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August 16, both by Security. These four discharges are taken up in that order.

* Two other girls were subpoenaed to appear for the first time on July 22, namely Anne Foster and Patricia Schlaht. The former did not testify and the latter ultimately testified for Respondents on September 20.

2. VIRGINIA OLSTAD

The consolidated complaint in Cases 36-CA-637, 638, and 639, alleges, *inter alia*, that Respondent Building Association discharged Olstad, on July 29, because of her activities in behalf of Local 11 and because she honored the subpoena requiring her presence on July 21 and 22 in Case 36-CA-410, thereby violating Section 8 (a) (1), (3) and (4) of the Act. The complaint further alleges that Respondent International, by instructing Building Association to carry out the discharge of Olstad had violated the same sections of the Act and had thereby further contributed unlawful support to Respondent Local 223 in the latter's capacity as a labor organization, within the meaning of Section 8 (a) (1) and (2) of the Act.

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Virginia Olstad, the only full-time office employee of Building Association, was employed full-time as a telephone operator on the building switchboard which served all the building offices, although some offices also had additional private lines. She entered the employ of Building Association on February 9, 1953. During her period of employment she received a \$5 wage increase in August or September of 1953 from Building Association President Crosby who was her direct superior. Olstad, as she testified, was one of the group who, at the request of Marian Henry, had signed a petition for Local 11 in mid-July of 1954. She was discharged on July 29, effective July 30. Late in the afternoon of July 29, which was 7 days after these hearings had recessed on July 22, Crosby approached the switchboard where Olstad was on duty, silently handed

her an envelope, and left. Olstad opened the envelope and discovered therein a letter signed by Crosby and addressed to her which much to her surprise, read as follows:

Please accept this notice as your termination of employment as of July 30, 1954.

You will find enclosed a check in the amount of \$59.25 to cover this week's salary and a check in the amount of \$118.50 to cover two weeks notice.

Sincerely regret having to take this step but I consider it necessary. I would be happy to discuss this further with you if you wish to do so.

Later that afternoon, Olstad went to Crosby's office. There is a substantial conflict between Olstad's version of the ensuing conversation and that of Crosby. Not only was Olstad a most impressive and straightforward witness but, as will appear below, there are a number of major discrepancies in the versions of Respondent's witnesses including Crosby which render their versions unworthy of credence.

Thus, Olstad testified and I find that she proceeded to Crosby's office on July 29 and, her discharge letter being silent as to a reason, asked why she had been discharged. Crosby replied that he did not wish to give her a reason as she might use it against him; that she had been warned 30 days earlier by him to stay out of building politics; that she had lost her "loyalty"; and that he was not dissatisfied with her work but that several of the secretaries of the various locals had complained about her. He offered finally to accept her resignation and to give her the best of recommendations. It is noteworthy that Crosby, in his post as Recording Secretary of Joint Council, similarly refused to give Irene Morcon Barnes the reason for her discharge on August 13.

Crosby's version was that he had warned her 30 days earlier to operate the switchboard so as to merit the con-

fidence of building tenants and not to loiter on coffee breaks; that he thereafter observed no improvement in her performance; and that he decided on July 29 to discharge her, at which time he reminded her of their prior talk and claimed that she had not complied with his recommendations.

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Olstad credibly testified that there had in fact been a talk with Crosby approximately 30 days earlier but that it had not been on the matter referred to by him in his testimony. It appears that a former office employee of Security Fund, one Lucille Tombe, had returned to work in the building as an employee of Local 206; that Crosby had been instrumental in obtaining the position for her, apparently out of friendship; that there had been bad feeling between Tombe and Mary Ermence, an employee of Security Fund; that Ermence had, according to Crosby, started a silent treatment of Tombe; and that Olstad was told by Crosby on this occasion to stay out of internal politics in the building. She testified that no mention was made of her performance of her duties on this earlier occasion and that Crosby had mentioned her talking to employees during coffee breaks only on the occasion of her discharge. I find that approximately 30 days prior to her discharge Crosby spoke to Olstad about the Tombe matter; that he at no time prior to her discharge complained about the performance of her duties and, specifically, that she had monitored calls; and that these complaints were raised for the first time by Crosby on July 29 and only after Olstad sought him out and persisted in obtaining the reason for her abrupt discharge.

It is ultimately certain alleged derelictions on the part of Olstad, namely misfeasance and malfeasance of duty as a telephone operator, which Respondent basically advances as a reason for her discharge. And it is precisely these

reasons which are not only demonstrably porous in nature but, in addition, with respect to which Crosby, testifying in detail, and his supporting witnesses have substantially contradicted themselves.

The item stressed most herein by the witnesses for Respondents was the claim that Olstad had "monitored" or listened in to a telephone call made to San Diego by a building tenant, namely Secretary-Treasurer Estabrook of Local 162. Crosby, in his capacity as president of the Building Association, was understandably concerned over complaints relative to telephone service and was unhappy over the fact that some tenants had installed private lines, he preferring that all calls be handled through the switchboard. He testified that Estabrook complained to him about Olstad shortly before he, Crosby, had his talk with Olstad 30 days prior to her discharge; that Estabrook informed him he had telephoned a number in San Diego; that upon completion of the call he, Estabrook, happened to pass the switchboard; and that Olstad promptly commented that the recipient of the call, one Poteet, was a pleasant person. Estabrook allegedly expressed surprise over the fact that Olstad was familiar with the identity of the person he had called. Crosby testified that he never raised this matter with Olstad because he felt that she would deny it; nevertheless, he allegedly did communicate with a representative of the telephone company and made inquiries concerning the monitoring of calls and methods of detecting this practice.

(1) The testimony of Estabrook, however, the complainant in the matter, places the call at a far earlier date. While he did corroborate Crosby to the extent that he allegedly believed his San Diego call had been monitored, his other testimony does not support that of Crosby. It will be recalled that Olstad entered the employ of Building Association on February 9, 1953, almost one and one-half years before her discharge. Estabrook testified, contrary to Crosby that his complaint about the San Diego call was

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one of several he had made to Crosby during a 30 to 60 day period which he placed as *not "too long after Mrs. Olstad came to work,"* and also shortly after Olstad came to work for the building.

Estabrook also testified that it was a result of this San Diego call and several similar incidents not explained

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herein that he allegedly determined to install a private phone in his office; that he did so after the San Diego incident; and that he installed it "at least six months" prior to the date of his testimony herein on September 16. Thus, Estabrook has variously placed the date of his complaint to Crosby some time in 1953, also no later than mid-March of 1954 but apparently earlier, and in either event long before Crosby claimed that he received the complaint.

In view of the fact that Olstad had been in the employ of Building Association for almost one and one-half years, it is clear and I find that this incident, even on the basis of Estabrook's version, was an ancient matter which took place long before the discharge of Olstad and long before the talk between Crosby and Olstad late in June which, in any event, dealt with other matters, and that there was no subsequent complaint of this type from Estabrook to Crosby.

(2) But there is a more basic flaw in Estabrook's testimony concerning the San Diego incident. His testimony would indicate that he placed a call to the home telephone number of a Teamster representative in San Diego, one Poteet, and that Olstad could not possibly have been familiar with the number. The credited testimony of Olstad effectively disproves this claim. She testified that she had in fact on many occasions asked Estabrook whether Poteet was a pleasant person because, as Estabrook well knew, she was interested in locating similar employment in San

Diego and that she asked Estabrook if Poteet had a switchboard and, if not, would Estabrook persuade him to install one there. In fact, she discussed Poteet with Estabrook not once but rather once a week from early spring of 1954 until the time of her discharge.

She further testified, and I find, that Estabrook was the only person in the building who placed calls to San Diego and that she, in behalf of Estabrook, had placed person-to-person calls for Poteet in San Diego on many occasions. It would be perfectly understandable for a switchboard operator to be familiar with a telephone number regularly called out of town even on the basis of a station-to-station call. Moreover, Olstad, as elsewhere, was an impressive witness. The means for contradicting her testimony concerning these numerous out-of-town calls to San Diego, namely, telephone company records of long distance calls, was available but was not utilized, despite the fact that Crosby allegedly did not hesitate to confer with a telephone company representative when he investigated the complaint about monitoring of calls. In sum, the facts do not bear out this complaint by Respondents. Not only was the matter a relatively ancient one but there is no evidence of any warnings given to Olstad because of her alleged derelictions in servicing the calls of Estabrook. This is in strong contrast to the fact that Crosby, on his own testimony, saw fit to allegedly warn Olstad about so slight a matter as speaking to another employee although Olstad apparently had not been an offender in that respect. I find that there is no substance to this claim by Estabrook and Crosby concerning Olstad.

Respondent adduced testimony concerning Olstad's alleged dereliction of duty in handling telephone calls made by Secretary-Treasurer Thomas Malloy of Teamsters Local 255 which is not directly involved herein. According to Malloy, he was disconnected on three separate occasions while speaking on the telephone at 5:30 p.m., the hour that the building and the switchboard normally close. On either

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the second or third of these occasions, which he placed as occurring 6 months prior to the date of his testimony herein on September 20, 1954, namely on or about March 20, he complained to Olstad who asked him whether he had placed or received the call. Malloy did not recall his answer at the time but did recall that Olstad replied that she could not possibly have disconnected him. Malloy also testified

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that he suspected Olstad had been listening in to his calls on various occasions, the dates of which he did not furnish, because he heard a clicking noise while he was talking on the line.

There are a number of factors which render this testimony singularly unimpressive.

(1) The time that Malloy discussed the matter with Olstad, on the face of his own testimony, was approximately mid-March long before her discharge and well before the conversation that Crosby held with her approximately 30 days before her discharge.

(2) It does not appear from the record that Malloy considered the matter of sufficient weight to bring to the attention of the building management. He testified that he had not discussed his suspicion that Olstad was listening in on his calls, in view of the clicking noise he heard, with Olstad or Crosby. Malloy did not specifically testify that he did not complain to Crosby concerning those times that he was cut off, but the testimony of Crosby discloses that Malloy did not. Crosby was asked to enumerate those who had complained to him about Olstad's work and he proceeded to name several people but did not include Malloy.

(3) The testimony of Olstad discloses that she was devoid of fault on the occasion that Malloy complained about being cut off and moreover that she then explained the matter to him. Thus, on the indicated occasion, Malloy

did appear at the switchboard and complained about being cut off. Olstad ascertained from him that he had made this call and reminded him that the switchboard was an automatic one; that Malloy, by dialing the numeral nine, was automatically given an outside line; that by dialing nine Malloy, the caller, was automatically connected with the telephone equipment downtown; and that she, Olstad, used no plugs in completing such a call and in fact had no control over it. She further informed Malloy, in conclusion, that he was perforce disconnected on the other end of the call. This talk, it may be noted, took place in the presence of Malloy's secretary who happened to be standing near the switchboard, but who did not testify herein. Upon receiving this explanation Malloy made no further comment and left the scene.

(4). As to the clicking noises constituting evidence of the monitoring of calls, the uncontroverted and credited testimony of Olstad discloses quite the contrary. She testified that the building equipment is automatic; that when an incoming call is received, the operator must test to see whether the called party is talking on a line; that the test is made by touching the board in the proper hole with the tip of the operator's cord; that if the party is talking the act of touching with the cord causes a clicking noise; and that if the party is not talking there is no clicking noise and the operator then knows that the line is open and plugs it in.

It is clear and I find that Olstad's conduct on these situations did not constitute the monitoring of calls as Respondents contend. Moreover, the true explanation of the situation was presumably within the knowledge of Crosby who, as he testified, had seen fit to contact the telephone company at the time of the San Diego incident and had received an explanation of the operation of a switchboard. I find, in view of the foregoing, that there is no substance to Respondents' allegations insofar as they relate to this Malloy incident.

The next complaint concerning Olstad's performance of her duties was made by Jim Haggin, secretary of Team-

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sters Local 281. According to Crosby, Haggin expressed general dissatisfaction with Olstad, stating that he believed she was listening in on telephone conversations. Haggin did not furnish Crosby with any specific instances, merely explaining his objections to Olstad and stating that he would install a private phone if conditions did not improve. The testimony of Crosby, although vague in this respect as in others, apparently attributes but one complaint to Haggin and this, together with complaints from others, allegedly was received from 4 to 6 weeks prior to his, Crosby's, testimony herein on September 15. Crosby also testified that "It could have been a couple months ago. I don't know." This, as is apparent, embraces a period starting 2 weeks prior to Olstad's discharge and ending 2 weeks after her discharge, in mid-August.

Haggin, however, supplied considerable more detail in his testimony. He testified herein on September 20 that he complained to Crosby two or three times in mid-summer of 1954 and that it might have been in June; that of three complaints, the last two were about 2 weeks apart and the last one about 1 week before Olstad's discharge; and that the first complaint was about 2 months before the last two. His testimony would place the complaints as starting over 2 months prior to her discharge, some time in May, and ending approximately July 22. Olstad denied that she had ever monitored any phone conversations of Haggin or of anyone else. Aside from the inconsistencies between Haggin's and Crosby's testimony herein, there are a number of factors which render Haggin's purported dissatisfaction with Olstad unimpressive:

(1) Initially, the testimony of Haggin was vague and self-contradictory. In his direct examination he testified

that on the first occasion he heard Olstad talking over the public address system and that on the second and third occasions he heard her talking to someone. On cross-examination, he testified that he was able to identify her voice only on the third occasion.

(2) As indicated, it was Olstad's job to page people and to make announcements over a public address system whose only microphone was located on a shelf immediately adjacent to the switchboard. Olstad, as she testified, kept her headset on while making announcements. According to Haggin, he had placed a long distance call to Seattle and heard Olstad speaking over the public address system. He claimed that he heard her voice speaking into the mike and not the reproduction of her voice over the several outlets located throughout the building. Just how he was able to completely sever her spoken words from her reproduced words, and in fact completely eliminate the latter, he did not explain.

(3) Moreover, with respect to the long distance call, it is common knowledge that an operator in placing a long distance call retains an open key until such time as she has completed the call and, if necessary, reached the proper party. In fact, Crosby, at one point in his testimony, indicated that he was aware of this necessary practice. Thus, it would seem quite appropriate for Olstad, in placing a Seattle call for Haggin, to have kept a key open until that time, and, if an announcement was needed, to have proceeded to make it.

(4) This brings up Olstad's uncontroverted and credited testimony that if she in fact had made an announcement in her customary loud voice over the system while Haggin was on the line, with the key open, the result would have been such as to shake his teeth rather than to permit him to sit still and overhear it.

(5) It is also common knowledge that a telephone operator on an automatic switchboard can overhear a conversation, if she wishes, without the parties being aware of any outside noise or of the fact that she is listening in. Assuming that Haggin in fact did overhear Olstad talking while he was engaged in two local calls, the very fact that she was engaged in a conversation would tend to refute his claim that she was eavesdropping.

(6) Finally, neither Haggin nor Crosby saw fit to raise any of these matters with Olstad which is indicative of the lack of gravity they attached to the situation.

The remaining source of displeasure with Olstad, concerning which evidence was adduced, was Reg Mikesell, president of Joint Council at the time material herein and secretary-treasurer of Local 501 of Vancouver, Washington. Mikesell was one of those identified by Crosby as having complained about Olstad at a time variously estimated by Crosby as being 4 to 6 weeks or 2 months prior to September 15, 1954, this constituting a period starting 2 weeks before and ending 2 weeks after Olstad's discharge on July 29, 1954. He also testified that Mikesell complained that Olstad was listening in to calls and that he complained twice. Crosby placed the time as subsequent to the conversation held between Crosby and Olstad one month prior to her discharge, but before the actual discharge. According to Crosby, Mikesell so firmly believed that his calls were being monitored that it was his practice, when calling his office from the outside through the board, to ask the party taking the call to call back on his, Mikesell's, private line. Just why Mikesell did not call on the private line in the first place is not disclosed.

Here as elsewhere Respondents' contentions are not impressive for, as will appear, when consideration is given to Mikesell's basis for concluding that Olstad was monitor-

ing his calls, one is almost at an utter loss to comprehend how a rational person, not motivated by discriminatory factors, could have come to the conclusion that Mikesell did.

(1) Thus, according to Mikesell, Olstad displayed familiarity with a complication that arose between Local 501 in Vancouver and Local 305 in Portland. Although both locals had similar contracts covering the milk drivers that constituted their membership, the contract for Local 305 in Portland called for a starting hour of 6 a.m., whereas the contract for Local 305 in Vancouver called for a starting hour of 7 a.m. The complicating factor was that Portland drivers in Local 305 sometimes did work in Vancouver. As a result Mikesell had instructed Business Agent Olson not to make deliveries in Vancouver before 7 a.m.

In what manner the foregoing background is directly germane to Olstad's conduct, set forth below, is not definitively disclosed by the testimony of Mikesell. However, he did testify that Olstad asked him one day what was the matter with Olson because the drivers were angry with him. Mikesell promptly concluded, on the basis of this query from Olstad, that Olstad had heard of the difficulty involving the two locals, or the resentment at Olson, by listening in to his, Mikesell's, telephone conversations. Just how he arrived at this conclusion is not disclosed; moreover, his testimony supplies no logical basis for his having come to this conclusion. Olstad testified, on the other hand, that a girl friend of hers happens to have the good fortune to be married to a man in the dairy industry; that this friend of hers, presumably repeating information gleaned from her husband, made derogatory remarks about some ostensibly unethical conduct by a Teamster representative

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in Vancouver to Olstad; and the latter, in turn, attempted to defend her indirect employer and informed her friend

that she doubted whether Mikesell knew of this conduct, the precise nature of which does not appear in the record.

Olstad testified that she then spoke to Mikesell on the occasion he referred to, told him of the information she had received from her friend, and identified the source of her information. She further testified that she asked Mikesell for some information on the matter because, as she told him, she had been under the impression that the Teamster organization did not carry on that type of "tactics" any longer. Mikesell later testified only that he did not "remember" that Olstad gave him the source of her information. I find that Olstad, an impressive witness here as elsewhere, did so inform Mikesell. I further find that this incident does not on its face remotely constitute evidence of monitoring by Olstad. The fact is that she heard of certain events and mentioned them to a Teamster official. Whether she was improperly forward by so taking the initiative is immaterial herein because Respondent made and makes no issue of it. Finally, even Mikesell conceded that Olstad might have learned this information elsewhere.

(2) Even more impressive herein is the actual timing of the incident. Crosby, as noted, portrayed Olstad's alleged derelictions as taking place a matter of weeks before her discharge, and, in fact, subsequent to an alleged warning he gave her about her work 1 month prior to her discharge. Mikesell, however, testified that his conversation with Olstad took place in the *fall of 1953*; this was almost one year before she was discharged. If Mikesell mentioned the incident to Crosby at all, presumably he would have done so soon thereafter, although it does not appear from his own testimony that he ever mentioned it to Crosby. Significantly, Olstad got a raise in pay in August or September of 1953. I find that this incident, as testified to by Olstad, took place in the fall of 1953, long before the discharge of Olstad, and that there is no substance to

Respondents' claim that the incident played a part in the determination to terminate Olstad.

Conclusions

It has been demonstrated that the various episodes advanced by Respondent as evidence that Olstad engaged in improper activities as an employee are contrary to the fact, not substantiated, fall of their own weight, or are singularly trivial. I find that they were not the true reasons for her discharge. As for the other factors relied upon by the General Counsel, the record demonstrates that the evidence heavily preponderates in favor of his position herein;

(1) As stated, Olstad was one of those who signed a petition for Local 11 in mid-July 1954.

(2) Olstad was one of four female employees under subpoena to appear on July 21 and recalled on July 22 in Case 36-CA-410, the complaint in which was based upon charges filed by Local 11. These charges resulted, as found, from the organizational activities of Local 11 in 1954 and the rival activity of Teamster Local 223. As will appear, the reasons advanced in the cases of the other three women who were discharged by various Teamster organizations and Security Fund are as devoid of substance as those in the case of Olstad. And, although different reasons are advanced in each case, there is one common denominator in the cases of all four, namely, these were the only four girls under subpoena to appear in behalf of the General Counsel at this hearing both on July 21 and 22 in support of the General Counsel's complaint which was based upon charges filed by Local 11.

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(3) Olstad was discharged after almost one and one-half years in Respondent's employ during which she had received a wage increase.

(4) Crosby, who conceded that she had been an excellent operator technically, save for her alleged derelictions and was willing to give her a recommendation, nevertheless, was unwilling to give her the reasons for her discharge.

(5) Crosby never warned Olstad concerning any of the alleged derelictions he raised herein, which, moreover, were demonstrated to have no merit.

(6) The record demonstrates that counsel for Building Association sought, on July 21, pursuant to a request from International Representative Sweeney to persuade Olstad not to appear at the hearing, pending his attempt to get her temporarily excused in order that the switchboard be manned until such time as Olstad was actually needed to testify. She later telephoned Counsel Landye to the effect that she had consulted with her own attorney, although she had not, who advised her to honor the subpoena requiring her appearance at 10 a.m. on July 21. Sweeney was promptly advised of this conversation by Landye. Moreover, later that day, after the conclusion of the hearing, Sweeney commented to Olstad that he had tried "to get her off the hook" but that she would not return to work. Olstad replied that she had enjoyed the proceeding so much that she did not want to leave them.¹⁰

Just how this appearance at the hearing was viewed by officials of the various Respondents was well indicated by the credited testimony of Mary Ermence, an employee of Security Fund, whose discharge is hereinafter discussed. Thus, on July 22, her superior, Earhart, in commenting on Marian Henry, another Security Fund employee, who appeared at the hearing on July 22, pointed out that Henry had been under subpoena and had talked with the General

¹⁰ The complaint in Case 36-CA-648 alleges alleged unlawful attempts by Sweeney to dissuade employees from testifying; this allegation is treated hereinafter. At this point it is found, however, that although counsel for the Building Association, James Landye, acted as Sweeney's agent on this occasion, nevertheless I see nothing improper in his, Landye's, conduct.

Counsel's representative and the "enemy." While Earhart's statements are not binding upon Building Association, which knew she was under subpoena, they illustrate how the presence of the four girls on July 22 in aid of the case brought by the arch-rival of Teamsters, Local 11, was regarded.

I find in view of the foregoing considerations that the evidence heavily preponderates in favor of the position of the General Counsel herein. I find that Building Association discharged Olstad on July 29, one week after she had honored a Board subpoena to appear at this hearing on July 22 in support of a case initiated by Local 11. I find that Building Association thereby discriminated with respect to the hire and tenure of her employment in order to encourage membership in Teamsters and discourage membership in Local 11, thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed under Section 7 of the Act, and violating Section 8 (a) (1) and (3) thereof.

The complaint also alleges that this discharge was violative of Section 8 (a) (4) of the Act. Several of Respond-

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ents' briefs stress the fact that Section 8 (a) (4) spells out a violation where an employee has "given testimony under this Act," whereas Olstad and the other three employees had merely honored subpoenas and appeared at the hearing on July 22. It is clear, however, that their presence at the hearing was commanded by the General Counsel as a preliminary to their ultimately testifying at an undetermined date or hour; this is underscored by the fact, as the record demonstrates, that the early days of this hearing were unexpectedly devoted to procedural matters and that all four girls later did testify, although after their discharges.

The Board's administrative process must be protected by removing the impediment of employee fear of reprisal because one has furnished evidence which the Board requires in order to fulfill the determinations entrusted to it by Congress. The objectives of the Act would be thwarted if the employer could impose such restraints upon the right of an employee to appear and testify. It is mere sophistry to state that an employee is protected because he actually gave testimony at a Board proceeding, but is not protected because he honored a subpoena, appeared at the hearing, and was discharged before he had an opportunity to testify. The invasion of the employee's rights and impairment of the administrative process, in my view, is all the greater in the latter instance.

I find, therefore, that by the discharge of Olstad, Building Association has also engaged in conduct violative of Section 8 (a) (4) of the Act. See *N. L. R. B. v. Fulton Bag and Cotton Mills*, 180 F. 2d 68 (C. A. 10); *Pacific Inter-mountain Express*, 110 NLRB No. 14; *Kanmak Mills*, 93 NLRB 490, 493; *South Jersey Coach Lines*, 92 NLRB 791; and *Briggs Manufacturing Co.*, 75 NLRB 569, 570.

The consolidated complaint in Cases 36-CA-637, 638, and 639, further alleges that the discharge of Olstad by Building Association was carried out pursuant to instructions from Respondent International and that the International has as a result also violated Section 8 (a) (1), (2), (3), and (4) of the Act. As I construe the complaint and the evidence, the General Counsel is proceeding on the theory that the liability of the International results from the fact that International Representative Sweeney brought about the discharge of Olstad as part of a plan to wipe out support of Local 11 in the building as well as to prevent hostile testimony in these hearings. While there is evidence that Sweeney was actively engaged in promoting the interests of Teamsters Local 223 and was opposed to the representation of employees by Local 11, I do not believe that the

record will support a finding that Sweeney, as an agent of the International, directed, authorized, or brought about Olstad's discharge. The facts herein are equally susceptible of the explanation that the discharge of Olstad was carried out by Crosby independently of the instructions by Sweeney, although presumably not contrary to his wishes.

The General Counsel has not argued herein that the International is responsible for the acts of its subordinate organizations absent any direct evidence of authorization or ratification. See *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344. While a good argument could be made in support of this proposition, inasmuch as the facts present herein demonstrate a greater degree of International control over its subordinate organizations than was present in the above-cited case, and the record also demonstrates more active participation by the agent of the International in the affairs of Teamster subordinate organizations in the Teamster Building than would accompany mere organizational efforts, I do not deem this issue of International responsibility, *per se*, for the acts of its subordinates, to have been litigated before me. Accordingly I shall recom-

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mend that this allegation of the complaint against the International be dismissed.

3. IRENE MORCOM BARNES

The case of Barnes actually involves two acts of alleged discrimination against her, both carried out by Crosby in two of his three roles herein, namely as president of the Building Association and as secretary of Joint Council. The complaint in Cases 36-CA-637, 638, and 639 alleges that Building Association on July 29, 1954, relieved Barnes of certain part-time duties previously performed by her. The complaint in Case 36-CA-647 alleges that Joint Council, on August 13, discharged Barnes from her full-time position. Both complaints also attribute responsibility for the

discharge and loss of work to the International on the theory that the action was taken pursuant to instructions from the International.

Barnes entered the employ of Joint Council in April of 1953 and was one of several full-time office clericals in its employ. Her primary duties, initially, were as secretary to Ward Graham, then secretary-treasurer of Joint Council. Barnes also was retained on or about the same date as a part-time bookkeeper for Building Association. For this she was initially paid \$70 weekly by Joint Council and \$5 from Building Association. In the fall of 1953, she received a \$5 wage increase from Joint Council and another one and one half months later; this making a total of \$80. Several weeks later her pay from Building Association was raised to \$10 weekly.

The record demonstrates that Barnes was a supporter of Local 11. Late in June or early in July of 1954, she signed the petition circulated by employee Marian Henry of Security Fund urging the Board to conduct an election and ascertain whether the employees of the Teamster Building desired representation by Local 11 or by Teamsters Local 223. During July, she also signed a card designating Local 11 as her bargaining representative. Barnes was one of six girls under subpoena by the General Counsel on July 21 who attended the initial hearings herein and was one of four, including Olstad whose discharge by Building Association has previously been found to be discriminatory, who were directed to return on July 22 and did so. As in the case of Olstad, events affecting her tenure of employment happened rapidly thereafter.

On July 28 or 29, 1954, Crosby, acting in his capacity as president of the Building Association, relieved Barnes of her duties on the Association books, giving her no reason. As demonstrated, this was either the same day or the day before the discharge of Olstad by Crosby who similarly furnished Olstad no reason. On the following day, Crosby

notified Barnes that she would no longer relieve the switchboard operator, Olstad, on the latter's coffee breaks. On August 13, Crosby, acting in his capacity as recording secretary of Joint Council and in behalf of its executive board, informed Barnes that she was discharged. Crosby refused to give her a reason and admitted herein that he then stated he expected her to file charges with the Board.¹¹

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The defense of Joint Council and Building Association went into great detail to establish that the discharge of Barnes resulted from her failure to follow a procedure established by Joint Council early in March 1954. Similarly, Crosby testified that he previously took away Barnes' work on the Building Association books because she had not followed these procedures on Joint Council work and that as a result he lost confidence in her. Some explanation of this procedure may be of assistance in evaluating subsequent events.

The record amply demonstrates that to some extent Barnes was caught in the middle of an intra-union battle for power, although as will appear this constituted a pretext for her discharge. Ward Graham, for whom Barnes primarily worked as secretary, had been secretary-treasurer of Joint Council from February 1953 until August 20, 1954. However, some months before, he had lost much of his power in the affairs of Joint Council and this power in turn had fallen upon Crosby and International Representative John Sweeney. On or about March 5, 1954, Graham was relegated to the inferior post of secretary-treasurer of Teamster Local 324 in Salem, Oregon. Although he retained his post as secretary-treasurer of Joint

¹¹ There is a conflict between Barnes and Crosby as to whether Crosby, on this occasion, told Barnes, as she testified, that she would discover the reason for her discharge as the other girls did. Phyllis Dietrich, her co-worker, supports Crosby in this respect. There is no conflict, however, over the fact that he refused to give Barnes a reason for the discharge.

Council, he retained little if any influence in the affairs of that organization, but did appear in the Portland office one or two times weekly.

On March 5, 1954, the executive board of Joint Council, consisting of President Mikesell, Recording Secretary Crosby, Trustee Estabrook, and one other, passed a resolution which withdrew the prerogative of its secretary, namely Graham, to dictate policy. In addition to naming John Sweeney as trustee of Taxicab Drivers Local No. 281, not involved herein, the resolution designated Sweeney "to coordinate the activities of all departments of the Joint Council and its organizers." Stated otherwise, as Respondents in effect contend, Sweeney took over the duties of Graham, although allegedly unwillingly, and was designated to handle and process matters coming before the Joint Council. Graham, however, was not entirely out of the picture. It is against this background that Respondents contend Barnes became an unsatisfactory employee, demonstrating loyalty primarily to Graham, not complying with instructions about the delivery of mail to Sweeney, and was discharged for that reason.¹²

The gravamen of Joint Council's difficulty with Barnes was its purported dissatisfaction with the handling of mail addressed to the Joint Council during the period from March 5, 1954, until the discharge of Barnes on August 13,

¹² Some testimony was developed to the effect that Barnes, while relieving on the switchboard once, told another employee that she had listened in on a telephone conversation and that this was reported to Crosby shortly before her discharge, although the incident occurred many months before her discharge. The record amply demonstrates, however, that Barnes was not discharged for that reason by Respondents and in fact it was not mentioned to her or taken up by the executive committee of Joint Council. Crosby in his testimony originally gave only the reason described above, and later, as an afterthought, did bring up this other matter, saying that he brought it up unwillingly. However, he displayed no such reluctance in bringing up a similar allegation when testifying about the discharge of Olstad. Hence, I deem it unnecessary to resolve the conflict herein as to whether Barnes did or did not listen in to a particular telephone conversation some months prior to her discharge.

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over 5 months later. It was contended that Joint Council set up a procedure which, had it been followed by Barnes, would have resulted in prompt processing of mail. However, an analysis of the basic contentions of Respondents discloses their lack of merit.

(1) Barnes credibly testified that her instructions were that mail addressed to the Joint Council, other than personal mail addressed to Graham, was to be turned over to Sweeney for handling on those days when Graham was not in Portland, namely 3 or 4 days a week. The testimony of Joint Council President Mikesell, in at least one instance agreed with that of Barnes. He allegedly informed Barnes that Graham should get the mail when in Portland, but otherwise that Sweeney should; it may be noted that Mikesell, his term as president ended, replaced Graham on August 25 as secretary-treasurer of Joint Council, Graham having resigned some days earlier. Crosby gave conflicting versions on the matter, testifying at one point that Barnes was directed to route all mail across Sweeney's desk, under all circumstances, but elsewhere testifying that if Graham was in the office he was to get the mail. In fact, Crosby allegedly admitted to Graham that the latter procedure was a desirable one.

(2) Sweeney testified that from March 5 through the discharge of Barnes on August 13, not a single piece of mail for the Joint Council was turned over to him. This I deem fantastic, irrespective of whether the mail was light, as Barnes testified, or, as Mikesell testified, heavy because the operations of Joint Council were big business. This serves only to highlight Mikesell's testimony that he concluded, within several weeks after March 8, that Barnes was secretive, was not carrying out orders, and that he therefore took up the matter with her on a large number of occasions. If the operation were of the size portrayed by

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Mikesell, and, bearing in mind Sweeney's foregoing testimony that no mail was delivered or processed by him, one could only conclude that the organization became defunct within a matter of weeks; this very definitely did not come to pass. Moreover, although the record amply demonstrates that the officials of Joint Council, and particularly Crosby, had no hesitancy in exchanging strong words with Graham about Joint Council matters, neither Crosby nor Mikesell deemed this development so serious as to take Graham to task during this entire period of over 5 months, despite the fact that he, in practical effect, had been deposed from office by the executive committee of Joint Council which included both Crosby and Mikesell.

(3) Respondents have contended that Barnes was secret- ing Joint Council mail. Barnes, it appears, had a key to Graham's desk and was under instructions from him to place all personal mail addressed to him in the desk. However, all mail entering the building was processed initially by Virginia Olstad, the telephone operator, and no one connected with the Joint Council deemed the mail situation to be so grievous during this period of over 5 months as to inquire from Olstad concerning the mysterious disappearance of all this heavy mail, as characterized by Mike- sell. Noteworthy herein is the fact that Edith Manning, an office employee of several locals in the building who customarily received some of her employers' mail from Barnes, testified that mail was frequently misdelivered in the build- ing; that she had heard one of her employers, Secretary Jim Haggin of Local 281, complain about mail being late; but that she had never heard Barnes blamed for any delay in the mail.

(4) As evidence of Barnes' alleged failure to follow this operating procedure, Respondents offered in evidence some 23 letters and telegrams which Mikesell, testifying on Sep- tember 20, 1954, said he found in Graham's desk when he

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searched the desk on Thursday evening, *September 16*, pursuant to a request from counsel for the International made that same evening, and while this hearing was in progress. However, Crosby, testifying on September 15, claimed that this correspondence had been found in the desk on *August 20 or 21* by Mikesell and himself while jointly looking through the desk.

Mikesell's further testimony herein is of interest. He testified that he was confirmed as secretary-treasurer of Joint Council on August 25 and left for a 2-week vacation on September 1. He claimed that upon his election he did not take over Graham's desk; that Graham turned over the key to him on August 25; that he, Mikesell, opened the desk either then or prior to September 1 when he left on his vacation; and that on leaving he, Mikesell, informed the officials of Joint Council that the desk was available for use if anything was needed. He, Mikesell, however, did not look into the desk until September 16, when, as indicated above, he was asked to do so, and when he allegedly found the exhibits offered herein. This of course is irreconcilable with the testimony of Crosby that he and Mikesell went through the desk together on August 20 or 21 when the two of them found it allegedly full of Joint Council mail.

(5) Moreover, the record does not disclose that Graham improperly received and handled the items in question. Some of these items were patently of no great consequence and the record will not support a finding that this correspondence did not properly come to Graham either in letters marked personal or on those days when he was in the office. Furthermore, testimony presented by witnesses for Respondent that replies were not discovered does not constitute evidence that replies were not made by Graham, in view of an incomplete search and in view of the fact that Graham was never questioned by Respondents on the matter, although available and, in fact, testifying for the General Counsel on other matters. Finally, a number of the

items were addressed to Graham by name and others were demonstrably minor in significance.

Conclusions

As demonstrated, Respondents' reasons for the termination of Barnes are not impressive. I am convinced, on this record, that were she as derelict in the performance of her duties as portrayed by the witnesses for Respondents, she would not have been retained for over 5 months in the face of the much more direct treatment handed out to her superior, Graham. I find that the reason advanced was not the true reason for her discharge. While the record demonstrates that Barnes may well have sympathized with Graham in his struggle for power, I am convinced that absent other factors she would not have been discharged when she was. The record does supply these other factors.

Thus, Sweeney considered Barnes as being pro-Graham and opposed to Sweeney carrying on the functions of Graham. This situation existed at the time of the initial hearings herein where Sweeney was allied with the various Respondents. Moreover Sweeney knew that Barnes was prepared to present testimony at the hearing which he, Sweeney, considered to be damaging to Teamsters. Thus, on the day before the opening of the hearings, Sweeney was advised by Counsel Landye, who in turn had been so advised by Barnes, that Barnes intended to tell the truth at the hearings and, more specifically, to testify that Sweeney had given her an application for Local 223 in 1953.

Sweeney promptly called in Barnes, as she testified, and informed her that he had not done so. She replied that he had also given one to Olstad, which he also denied. Sweeney

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denied herein that he had given an application to Barnes in 1953; however he did admit that he had given one to Olstad, as in fact the latter also testified. Accordingly I

credit the testimony of Barnes. In any event, on either version, Sweeney was on ample notice that Barnes would be a witness whom he, Sweeney, deemed to be hostile to the various Respondents.

More significantly, the record fully demonstrates the close relationship and cooperation between Crosby, the employer of Barnes, and Sweeney. In fact, Respondents' contentions concerning Barnes, treated above, demonstrate that Sweeney was in frequent contact with Crosby relative to the manner that Barnes allegedly performed her duties. Here as well, Administrator Earhart of Security Fund, who, as appears below, was in close and frequent contact with Crosby, informed Mary Ermence of Security Fund, prior to the discharge of Barnes, that Barnes was known to be associated with Local 11. Although Earhart's statements are not binding upon Crosby, they are significant in evaluating the views of the small group of men who, it is clear from this record, ran affairs in the Teamsters Building.

Also significant herein is the fact that Barnes was discharged in the same manner as Olstad, that is, without a reason being assigned by her employer, and that Crosby played a leading role in the discriminatory discharge that very same day, August 13, of Marian Henry by Security Fund, discussed below. See *E. Anthony & Sons v. N. L. R. B.*, 163 F. 2d 22, 26-7 (C.A.D.C.) cert. denied 322 U. S. 773. This unexplained coincidence of time is indicative, not of a real coincidence but rather, in the present circumstances and on this record, of a deliberate effort by management in the building to "scotch the lawful measures of the employees before they had progressed too far toward fruition." *N. L. R. B. v. Jamestown Sterling Corp.* 211 F. 2d 725, 726 (C. A. 2); and *Sears Roebuck & Co.*, 110 NLRB No. 187.

I find, in view of the foregoing, that Barnes, a Local 11 sympathizer, was discharged by Respondent Joint Council

on August 13, 1954, not for the reason advanced, but because she had identified herself on July 21 and 22, when under subpoena by the General Council, with the faction of building employees including Olstad which was sym-

pathetic to Local 11 and which was prepared, in support of its charges, to present testimony hostile to the interests of Respondents. The existence of a justifiable ground for discharge is no defense if it is not the moving cause. *Wells, Inc. v. N. L. R. B.*, 162 F. 2d 467, 460 (C. A. 9), and *N. L. R. B. v. Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730, 737 (C. A. 9) cert. denied 346 U. S. 937. I further find that Respondent Building Association on July 28 or 29, and for the same reasons, relieved Barnes of her duties with that organization, both actions being taken by Crosby in his respective roles with the two organizations. This conduct by Building Association and Joint Council patently was violative of Section 8 (a) (1), (3), and (4) of the Act. *N. L. R. B. v. Swinerton*, 202 F. 2d 511 (C. A. 9), cert. denied 346 U. S. 814, and *N. L. R. B. v. Whittin Machine Works*, 204 F. 2d 883 (C. A. 1).

As alleged in Case 36-CA-647, it is found that the discharge of Barnes by Joint Council constituted a visible demonstration that support of Local 11 and assisting the General Counsel in his presentation of the cases bottomed upon charges filed by that organization, would be met with prompt reprisals. Inevitably, her discharge constituted encouragement of and assistance to Local 223, the chosen vehicle of the Teamster organization to represent the office employees of the building. I find that her discharge constituted assistance to and support of Local 223, within the

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meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof. However, for the reasons previously indicated in the discussion of the discharge of Olstad, and particularly because the record does not demonstrate that

Sweeney specifically directed, caused, or ratified the actions taken against Barnes, I do not find that Respondent International was responsible for the discrimination against her and has thereby engaged in unfair labor practices.

4. MARIAN HENRY

The complaint in Case 36-CA-648 alleges, *inter alia*, that Security Fund and its administrator, William C. Earhart, both named as Respondents, discriminatorily discharged Marian Henry on August 13, 1954, within the meaning of Section 8 (a) (1), (3) and (4) of the Act. It also alleges that Respondent International and its agent, International Representative Sweeney, instructed the aforementioned Respondents to carry out the discharge of Henry, thereby violating the same sections of the Act. It is further alleged that this conduct by the above-named Respondents constituted unlawful domination of, and support to, Teamster Local 223 within the meaning of Section 8 (a) (1) and (2) of the Act.

Marian Henry entered the employ of Security Fund as an office clerical on May 15, 1942, and was discharged by Earhart on August 13, 1954. This, it is to be noted, was the same day that Crosby, the president of Building Association and recording secretary of Joint Council, who plays a part in the Henry case, discriminatorily discharged Irene Barnes, as heretofore found. At the time of her discharge, Henry had the second highest seniority in the office complement of approximately ten. There is no evidence of dissatisfaction on the part of Security Fund with her work, and the reason advanced by Earhart for her discharge was her alleged insubordination, which resulted in his decision on August 13, as he testified, to discharge her that day.

While Earhart was newly employed by Security Fund on April 1, 1954, and initially was not familiar with its operations and personnel, he does not contend that he lacked such familiarity after several months. In fact, he inaugurated a number of changes not long after he was

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hired, allegedly to improve the operating efficiency of the office. In such a context, entitled to weight herein is the fact that Earhart, when asked by Henry for a wage increase, granted her a \$5 increase effective the week of June 21, this being the week after her return from her vacation. I find, as Office Manager Ermence testified, that Earhart did not consult with Ermence on the matter prior to granting the increase. Although Earhart claimed that he did talk it over with Ermence before granting it, I find only that he asked her to communicate the news of the increase to Henry. And in any event, Earhart testified that both he and Ermence agreed that the wage increase was in order.

Insofar as this record indicates, Henry was the leading advocate of Local 11 in the Building, and was openly opposed to Teamsters Local 223. She was, moreover, a leader among the girls in the building, as well as among those in the Security Fund Office, and carried out certain concerted activities in their behalf.

Thus, when Local 11 renewed its organizational activities in the building in 1954, Henry became its chief protagonist. In May of 1954, 9 of the approximately 10 girls in the Security Fund office voted among themselves on the issue of whether Henry should represent them in the event they needed representation; they voted 6 to 3 that she should. Again, around June 1, she polled the girls in the Security Fund office as to their satisfaction or dissatisfaction with certain remodeling work being contemplated by Earhart. Later that month she visited the Portland office of the Board to ascertain whether or not a representation election was in the offing for the office clericals of the building. Learning that there was none, she concluded that a petition

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should be filed by Local 11. During the last week of June, she circulated among the 23 girls of the building and obtained eight signatures in favor of a Board election to

determine which of the two labor organizations should represent the building employees. Early in July she distributed authorization cards for Local 11 in the building, and obtained 13 signed cards, primarily from employees of Security Fund, prior to July 21. Also, during this latter period she collected dues for Local 11 from 14 girls.

As found, Henry was one of four girls, including Olstad, Barnes, and Mary Ermence, subpoenaed by the General Counsel to appear on July 21 and testify in support of charges brought by Local 11 against Respondents. She, too, was one of the four who were directed to return on July 22 and did so. Although Earhart, several days prior to July 21, informed Henry that counsel for Security Fund would get her excused from her subpoena, Henry replied that she had been served by the Board and would appear unless the Board excused her from it. Precisely how Henry's appearance on July 21 and 22 was viewed by her superior, Earhart, is set forth below.

On August 13, Henry was discharged by Earhart under the following circumstances: Shortly after the office opened, Crosby appeared and asked for Earhart who had previously telephoned from his home and informed Henry that he was ill and would not be in until 11:30.¹³ It may be noted that, in addition to his three posts with Teamster organizations, as described above, Crosby was also a trustee of at least eight of the trusts administered by Security Fund and, indirectly at least, an employer of Henry. Henry duly reported Earhart's illness to Crosby, who then asked for his home telephone number, saying that he wished to discuss the remodeling of the Security Fund offices with Earhart; the details of this remodeling project appear below. Earhart appeared on the scene shortly before noon and received some messages from Henry. He made a telephone call, left, and soon returned. He called Henry into his office, said that she had gone over his head on the remodeling job, that this constituted rank insubordination which he would not tolerate, and that her services were no longer

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desired. Henry protested that she had been in the office for over two years, that Earhart had never warned her or criticized her work, and that she was entitled to a warning. She added that the decision to terminate her was not that of Earhart, and that she was aware of its source. Earhart made no reply.

Earhart testified that he discharged Henry around lunch time on August 13; that he believed it "possible" that he discharged her after talking with Crosby that day; that he, Earhart, made the decision that very day, August 13, to discharge Henry; and, consistent with what he told Henry, that the reason for her discharge was her lack of acceptance of the remodeling project and going over his, Earhart's, head to Crosby, as president of Building Association.

The history of the remodeling project is as follows: Security Fund had office space in the basement of the Teamsters office building. After Earhart entered the employ of Security Fund in April of 1954, he concluded that the office ought to be rearranged in the interest of efficiency. This project, while utilizing the same working area, involved the erection of new partitions and the removal of others, this resulting in Earhart and Ermence having separate offices and placing the rest of the employees all in one large room. After being considered and discussed

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for some period of time, both by Earhart and the office employees of Security Fund, the project was scheduled to start on or about July 24. It was started at that time and was substantially completed early, in August, around August 6, when Office Manager Ermence left on her vacation. Certain finishing touches were applied between that date and August 13. There is no dispute but that Henry,

"Findings hereinafter are based upon the testimony of Henry, a clear and forthright witness. Her testimony is not substantially disputed by that of Earhart.

as Respondents contend, was opposed to the remodeling project, although as further appears, she was acting in a representative capacity for the girls in the Security Fund office who had designated her as their spokesman.

Henry informed Earhart a number of weeks prior to her discharge, and some days prior to July 22, that the girls in the Security Fund office uniformly opposed the changes. It appears that the girls in discussing the proposed changes with Henry had expressed the fear that the changes would constitute a disruptive influence that would throw them behind in their work, which apparently proved to be the case.

On July 22, Henry attended the second day of the hearing under subpoena, as set forth above, after previously declining Earhart's suggestion that counsel for Security Fund get her excused. During a recess at the hearing, Earhart spoke to Office Manager Ermence about Henry. He stated, according to Ermence, that "Four Top Teamster officials" had asked him that day what was "wrong" with Henry, because Henry "went up and talked to Mr. Tillman (counsel for the General Counsel) and the enemy." Ermence pointed out that Henry was present at the hearing under subpoena; Earhart replied that he nevertheless was unhappy over the matter and asked "Doesn't she know who signed her pay check?"¹⁴

Just about the same time, but in any event on July 22, Henry telephoned Crosby and asked to see him in person about the remodeling job, explaining that the girls in the Security Fund office were one hundred percent opposed to it. He replied that it was Earhart's responsibility and when she pointed out that Earhart had refused to discuss

¹⁴ These findings and those that follow are based upon the straight-forward testimony of Henry and Ermence, which is credited here as elsewhere. The testimony of Earhart either supports or does not substantially dispute theirs. In fact, Henry presented her testimony despite her expressed fear, stated on cross-examination, of Teamster officials. Whether justified or not, her presentation of testimony adverse to Respondents, under such circumstances, lends weight to her testimony.

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the merits of the plan with her, as he had, Crosby refused to talk to Henry about it then or any other time.

At the end of the day, on July 22, Earhart had another conversation with Ermence wherein he disclosed that he had been informed by Crosby of Henry's telephone call. He informed Ermence that Henry had done something unbelievable and very bad; that she "had the guts to go to Clyde Crosby and tell him about the remodeling job"; and that she had told Crosby that the entire office staff was unhappy over the remodeling which was due to commence on or about July 24.

On Friday morning, August 6, Earhart again spoke to Ermence, stating that something would have to be done about Henry because Crosby had informed him that Henry

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"talks too much." Ermence pressed Earhart for details and he, in turn, explained that Henry had allegedly been discussing the discharge of Olstad around the building and saying that Olstad "would live to see the day when the NLRB put her back to work." Ermence explained that Henry might have been influenced by her, Henry's, close friendship with Olstad, and that "a lot of us girls here in the office" regretted Olstad's departure.

Later that day, August 6, Earhart called Henry into his office. He stated he had learned from Teamster officials that Henry was upset over the discharge of Olstad. Henry admitted that she was, because Olstad was a close personal friend, and added that even Ermence became ill over the news that Olstad had been discharged on July 29. Earhart added that the Teamster officials had also attributed to Henry the statement that Olstad would be put back to work before long. Henry disavowed responsibility for rumors in the building, whereupon Earhart told her that the matter would be dropped, but to stay out of internal politics in the building. Earhart spoke to Ermence still later that day,

informed her that he had spoken to Henry earlier that day, and that "everything was fine." He stated that Henry denied making the statement attributed to her, but she had admitted that she was unhappy over the discharge of Olstad because of her close friendship with the latter. Earhart told Ermence that if Henry did not "keep her nose out of" building policies he would have to do something about it. Ermence was absent from the building the following week on her vacation.

On Thursday, August 12, a Teamster publication was circulated in the building and it contained an article dealing with the organizational campaign of Teamster Local 223. Henry and a group of Security Fund employees were discussing the article when Earhart entered the office. Henry then pointed to the article and asked Earhart how she was expected to stay out of internal politics in the building when such information appeared in a Teamster paper. She explained that the entire office was upset and that some of the girls had asked Henry, who was their spokesmen, to procure the return of their dues and initiation fees from Local 223. Earhart read the article but made no comment. The article, it may be noted, was of a factual and relatively innocuous nature, and its contents are not deemed particularly germane herein, save for the fact that they related to the organizational campaign of Local 223.

On August 13 Henry was discharged by Earhart allegedly for insubordination in going to Crosby about the remodeling project, under circumstances heretofore set forth. No other reason was given her. Turning to a consideration of the merits of this contention by Respondents, it readily becomes apparent that the contention is supported primarily by improbable and contradictory testimony and will not stand up as the true cause for her discharge.

(1) Earhart claimed that he discharged Henry on August 13 because of her insubordination in contacting Crosby. However, the alleged insubordination took place

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on July 22, and Earhart was informed of Henry's conduct by Crosby on the very day she spoke to Crosby. Earhart, in fact, mentioned the incident on the same day to Ermence, but disclosed no intention to discipline Henry, although at that time he was obviously taking Ermence into his full confidence. And, although Henry had engaged in no further alleged insubordination act of this nature involving the merits of the remodeling plan and/or Crosby, Earhart allegedly decided on August 13 to discharge her.

(2) Also deemed significant herein is the fact that just one week before her discharge Henry was taken to task by Earhart for the discharge of Olstad, heretofore found dis-

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criminatory, and predicting her to return to work in the building as a result of N.L.R.B. intervention. Although Earhart mentioned to Henry that Teamster officials had reported this to him, his talk the same day with Ermence discloses that Crosby was at least one source of his information and an influential one as well.

(3) But one day before her discharge, Henry openly criticized the organizational campaign of Local 223 and informed Earhart that some of the girls were interested in withdrawing therefrom. The implications of this for Earhart, who had been selected for his job by Teamster officials in the building, including Crosby, are obvious.

(4) It would appear that the foregoing statement by Henry brought matters to a head and was the final straw following her prior prominence in Local 11 organizational activities, her solicitation of signatures for an election, her signing up girls in the building for Local 11, and her collection of dues for Local 11. Also significant herein is the fact that Henry appeared at the hearing on July 21 under subpoena by the General Counsel, was one of four recalled on July 22, and openly conferred at the hearing with the General Counsel and counsel for the charging party in the

presence of Teamster officials. How this conduct was interpreted by the latter and, more particularly, how it was ultimately evaluated by Earhart, is reflected in Earhart's statement to Ermence that Henry had conferred with the General Counsel and the "enemy" at the hearing, and in his, Earhart's, pointed reference to her ignoring the identity of the people who signed her pay checks, a reference which I find was patently directed to identification of the Teamster organization as her indirect employer.¹⁵

(5) The foregoing serves only to highlight the order in which events took place on August 13. Earhart originally testified that he "possibly" conferred with Crosby that day prior to discharging Henry, but later conceded that he had. Crosby admitted that he spoke with Earhart that morning, prior to the discharge and told him of a rumor in the building that the girls had allegedly been instructed to slow down and that he thought Henry was the girl who issued the instruction. He allegedly informed Earhart that he wanted him to investigate the matter and put a stop to it. Crosby conceded that he might have indirectly indicated in this talk that Earhart should discharge Henry. This, however, is contrary to the testimony of Earhart who claimed that no one instructed him to discharge Henry.

While Crosby testified that on this occasion he discussed only the slowdown in the building with Earhart, the testimony of Earhart attributed other topics of discussion to Crosby. Thus, according to Earhart, Crosby, in addition to mentioning the slowdown, mentioned Henry's activities in the remodeling project, as well as her views of the Olstad discharge. Aside from the conflict in the two versions of

¹⁵ At this point it may be noted that Earhart claimed that the office employees of Security Fund were his, and not those of the trusts behind Security Fund and as a result, not the employees of the trustees of the Fund, one half of whom were Teamster designees; it will be recalled that Crosby was trustee of at least eight of these trusts. Although Earhart's contention is not sustainable, inasmuch as Security Fund is the operating arm of the trusts, I deem it unnecessary to develop this precise relationship herein.

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this conversation, further demonstrating the unreliability of the testimony, it is clear that Earhart's version brings up the remodeling project which involved relatively ancient conduct by Crosby, as well as the Olstad discharge which involved Henry's protest of the discrimination against Olstad by Crosby, also not then a current matter. Significantly, Earhart elsewhere testified that he discharged Henry only because of her insubordination in that respect; in fact he mentioned nothing else to her on August 13.

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Moreover, there is no substantial evidence that Henry directed or instigated any slowdown in the building. Nor did Earhart deem it necessary to investigate this matter. Significantly, Earhart did not in this conversation inform Crosby that he had previously selected Henry for discharge, a normal response in that context, were such the case. I find, on a clear preponderance of the evidence, that, prior to this conversation with Crosby on the morning of August 13, Earhart had not selected Henry for discharge. And although Earhart claimed herein that he was not aware of Henry's membership in Local 11, the record does clearly demonstrate that he knew her to be opposed to Teamsters Local 223, and in fact had so expressed himself to Ermence. Moreover, Earhart's comment to Ermence on July 22 clearly indicates that he regarded Henry as a supporter of Local 11.

(6) With Crosby on the scene on August 13, one is inescapably drawn to the fact that this was the very same day, August 13, that Crosby personally discharged Irene Morcom Barnes, under circumstances hereinabove found to be discriminatory. Moreover, it is clear from the foregoing sequence of events that it was Henry's espousal of the case of Olstad which, in part, put her in disfavor with Teamster officials and as a result with Earhart, who I find on this record as well as on his own testimony, was very

much subservient to the wishes of the Teamster officials, a not illogical situation in view of the structure of the trusts behind Security Fund. And, as Earhart testified, Crosby was a member of the committee who selected him for this job. Furthermore, irrespective of whether the discharge was directed by Crosby or not, the record still overwhelmingly discloses that the reasons advanced by Earhart and Security Fund for the discharge of Henry simply do not stand up. I find that they were not the true reasons for her discharge.

Conclusions

I find on a preponderance of the evidence herein that Henry was discharged by Security Fund and its administrator, Earhart, not for the reasons advanced by them, but because of her identification with Local 11 activities; her opposition to Local 223; her participation in the hearings of July 21 and 22, 1954, when she was identified by her employer as allied with the "enemy" because when under subpoena by the General Counsel she conferred with him and counsel for Local 11; and her support of Olstad, whose previous discharge was discriminatory. Her discharge for those reasons is found to have been violative of Section 8 (a) (3) and (4) as well as derivatively of Section 8 (a) (1) of the Act. *N. L. R. B. v. Nemec Combustion Engineers*, 207 F. 2d 655 (C. A. 9) cert. denied 347 U. S. 917; *N. L. R. B. v. C. & J. Camp, Inc.*,—F. 2d—(C. A. 5) decided 10/29/54; *N. L. R. B. v. Swinerton*, *supra*; *N. L. R. B. v. Whitin Machine Works*, *supra*; and *Kitty Clover, Inc.*, 103 NLRB 1665, 1680, enf'd 208 F. 2d 212 (C. A. 8).

Moreover, even on the basis of Respondent's claim that Henry was discharged because of her activity in protesting the proposed remodeling to Crosby, she did so as spokesman for the girls in the Security Fund office and this constituted concerted activity for the mutual aid or benefit of the employees, inasmuch as the proposed remodeling was anticipated by the employees as likely to adversely affect

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their working conditions, as in fact it temporarily did. Nor did her contacting of Crosby constitute insubordination, for Henry had first spoken to Earhart, had achieved no satisfaction, and had then proceeded to the official who was a trustee of at least eight trusts administered by the Security Fund office. I find therefore that her discharge for engaging in this activity independently constituted conduct violative of Section 8 (a) (1) of the Act. *Salt River Valley Water Users Assoc. v. N. L. R. B.*, 206 F. 2d 325 (C.A.9);

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N. L. R. B. v. Phoenix Life Insurance Company, 167 F. 2d 983, 987 (C.A.7) cert. denied 335 U. S. 845. *Modern Motors, Inc. v. N. L. R. B.*, 198 F. 2d 925 (C. A. 8); *N. L. R. B. v. Smith Victory Corps*, 190 F. 2d 56 (C. A. 2); *Standard Coil Products Co.*, 110 NLRB No. 61; *Mac Smith Garment Co.*, 107 NLRB No. 27; *Rugcrafters of Puerto Rico, Inc.*, 107 NLRB No. 72; and *Lloyd A. Fry Roofing Co.*, 109 NLRB No. 191.

I do not deem Crosby's participation herein as binding upon Respondent International or Respondent Sweeney and accordingly recommend that the case against them, in this respect, be dismissed.

I further find that Earhart's discharge of Henry strongly demonstrated to employees of Security Fund that adherence to and support of Local 11 and honoring the subpoena of the General Counsel herein constituted activity which would be met with strict and prompt reprisal. It is inevitable that her discharge constituted encouragement of and assistance to Local 223 of the strongest sort and aided the organizational efforts of that organization. Earhart was well aware of these organizational efforts and moreover, the record discloses that Earhart knew Henry to be an outspoken opponent of Teamster Local 223. Nor does it constitute a defense to Respondents that Earhart may not have expressly intended by the discharge to render assistance to

Local 223; that result inevitably follows. *Radio Officers Union v. N. L. R. B.*, 347 U. S. 17. I find that her discharge constituted assistance to and support of Local 223, within the meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof, as alleged.

5. MARY ERMENCE

The complaint in Case 36-CA-648 alleges, *inter alia*, that Security Fund and its administrator, William C. Earhart, both named as Respondents, discriminatorily discharged Mary Ermence on August 16, 1954, within the meaning of Section 8 (a) (1), (3), and (4) of the Act. It also alleges that Respondent International and its agent International Representative Sweeney instructed the aforementioned Respondents to carry out the discharge of Ermence, thereby violating the same sections of the Act. It is further alleged that this conduct by the above-named Respondents, as in the discharge of Marian Henry, constituted unlawful domination of and support to Teamster Local 223 within the meaning of Section 8 (a) (1) and (2) of the Act.

Ermence entered the employ of Security Fund in September 1950 as Claims Manager and, at the time of her discharge on August 16, 1954, had the highest seniority in the office. At the time of her hiring, the complement of personnel including Ermence totaled five or six, and as heretofore found, she was, until April 1, 1954, a supervisory employee. Prior to the hiring of Earhart on April 1, Security Fund had been under the direction of a succession of Teamster officials who devoted but a portion of their time to the office. The record does not disclose how substantial this time was and there is no evidence that these part-time administrators received a salary in addition to their remuneration from Teamster organizations. During this period, Ermence hired employees for the Security Fund office and also procured them for other organizations in the building. When Earhart came upon the scene, the total complement of personnel including Ermence was approximately 10. Her

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salary remained at \$100 per week thereafter, although the highest salary paid the other employees of Security Fund was not in excess of \$70 per week, and in some cases as low as \$55.

Ermence was on vacation during the week of August 9 and therefore was absent on Friday, August 13, when Marian Henry was discharged by Earhart. Ermence returned to work on Monday, August 16, and was greeted

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by Earhart, who promptly asked for her resignation. Ermence refused and asked for a reason, pointing out that she had been a devoted and loyal employee. Earhart replied that he had lost his faith in her. Earhart admitted that he refused to supply her with a reason and proceeded to discharge her.

A primary issue herein is whether or not Ermence was a supervisor within the meaning of the Act at the time of her discharge. The precise question is whether her duties, admittedly supervisory prior to the advent of Earhart, changed sufficiently thereafter so as to change her status to that of a rank-and-file employee. There is no doubt that some change was wrought in her situation. For all practical purposes Ermence had run the office some of the time before Earhart was hired. And, after Earhart was hired at an undisclosed salary, there is no doubt but that he proceeded to run the office. This was a full-time position for Earhart and moreover, as he testified, his absences from the office were slight, averaging approximately one-half day a week; these apparently were short absences of one hour or longer, although once in a great while he would be required to go out of town for a few days.

Thus, Earhart ran the office, but Ermence, as I find, was not relegated to the status of an ordinary rank-and-file employee. The issue is, and I deem it a close one, whether

or not she retained sufficient supervisory duties as to warrant the conclusion that she remained a responsible representative of management.

The record of the period that elapsed between April and August of 1954 demonstrates that Earhart relied upon Ermence to orient him in the problems of the office, but nevertheless did take a firm grasp of matters and forcefully went about making drastic changes. These included the remodeling operation discussed above as well as the installation of a new filing system, both of which were measures he determinedly carried out despite the opposition, whether sound or not I deem unnecessary to determine, of many girls in the office.

Ermence testified, and I find, that Earhart, soon after taking over, informed her that her duties were to be primarily clerical; however, this did not prove to be quite the case. The operation of the office consists basically of processing claims for benefits under the health and welfare plans. The job is broken down into a number of steps which are carried on at different desks in the office. It appears that these operations require a minimum of supervision, if any, and that the girls were pretty much competent to handle their duties by themselves. However, the problem did arise that work of a particular sort would occasionally pile up on a desk. Then, in order to avoid a bottleneck, it became necessary for other employees to devote themselves to this particular operation. Ermence would distribute the work to the appropriate desks and would work herself wherever her services were most required.

As for working area, she and Earhart, shared an office from April 1 on. In the remodeling operation, which started late in July and concluded just before her discharge, the net effect was to reduce a larger number of rooms to a total of three, namely one large office for all the girls and two small ones for Earhart and Ermence. Earhart informed Ermence, as she testified, that he desired a pri-

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vate office in order to have private conversations with the employees and that he wished her to have the office next to him so as to "direct the work out to the different desks."

There is evidence that in several instances during the April-August period Earhart handled the hiring or inter-

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viewing of prospective employees. They were directed to his office and he in turn asked Ermence to sit in on the interview and ask some technical questions on office procedure. After the interview was complete, Earhart would solicit Ermence's opinion as to the qualifications of the complaint.

During May, an employee of Security Fund, Tombe, was discharged for incompetency. According to Ermence, Earhart raised the matter and complained to her about Tombe's lack of knowledge on a certain matter; he then asked for Ermence's opinion of Tombe's work. Ermence gave her opinion, apparently unsatisfactory, and suggested that Earhart contact the auditor, repeating a comment previously made by the auditor about Tombe's work. Thereafter, Earhart did confer with the auditor and inform Ermence that he had decided to discharge Tombe. Earhart testified that he did give weight to the views of Ermence in this and other matters and that he "placed a great deal of confidence in the opinion expressed by Mrs. Ermence in any of the problems we were talking about, either in regard to hiring or firing." He claimed that he placed more weight on her views than on those of anyone else in the office.

In sum, the case of Respondents reduces itself to a claim that Earhart relied heavily upon Ermence and gave effective consideration to her views on hiring and firing as well as on raises in pay for employees. The claim of the General Counsel; in effect, is that Ermance was a senior employee who was in the nature of a lead lady at best but not a supervisor.

A number of recent cases tend to support the position of the General Counsel herein. These cases deal with analogous but not closely similar positions. See, e. g., *Poultry Enterprises v. N. L. R. B.*,—F. 2d—decided 11/24/54 (C. A. 5) where the Court pointed out that “occasional performance of supervisory duties does not make an employee a supervisor within the meaning of the Act.” This decision also cited with approval a number of Board holdings to the effect that “sporadic exercise of some supervisory authority, but not the full duties and responsibility of the regular supervisor, during the latter’s absence, did not constitute one a supervisor.”

In *Precision Fabricator, Inc. v. N. L. R. B.*, 204 F. 2d 567 (C. A. 2) the Court pointed out that a so-called “room boss” who made routine work assignments did not, in so doing, have independent judgment and was not a supervisor. Similar views were taken in the following decisions. *N. L. R. B. v. Parma Water Lifter Co.*, 211 F. 2d 278 (C. A. 9) cert. denied 10/15/54; *N. L. R. B. v. Whittin Machine Works*, 204 F. 2d 883 (C. A. 1); *N. L. R. B. v. Quincy Steel Casting Co.*, 200 F. 2d 293 (C.A.1); *N. L. R. B. v. North Carolina Granite Co.*, 201 F. 2d 469 (C. A. 4); *N. L. R. B. v. Beaver Meadow Creamery*, 215 F. 2d 247 (C. A. 3); and *N. L. R. B. v. Valentine Sugars, Inc.*, 211 F. 2d 317 (C. A. 5).

Similar views were expressed by the Board, in finding an absence of supervisory authority, in *Doak Aircraft Co., Inc.*, 110 NLRB No. 124; *Eagle Iron & Brass Co.*, 110 NLRB No. 123; and *Miami Paper Board Mills, Inc.*, 109 NLRB No. 31. In not too different circumstances, however, the Board found that supervisory authority did exist. *Dura Steel Products*, 109 NLRB No. 18; *Legion Utensils Co.*, 109 NLRB No. 187; *Beneke Corporation*, 109 NLRB No. 167; *Gen Pro, Inc.*, 110 NLRB No. 7; and *Colonial Fashions, Inc.*, 110 NLRB No. 193.

I have given considerable thought to the problem and, as indicated, I consider the decision a close one. The burden

of the General Counsel, however, is to prove his point by a preponderance of the evidence; in my view, the evidence stacks up fairly even and, therefore, the General Counsel has not preponderated herein. In view of Ermence's having

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been placed in a separate office, on a level or near level with Earhart in the eyes of employees; her being retained in the same substantially higher salary bracket she had enjoyed as a supervisor; her participation in the hiring of employees; her role, even on her own testimony, in the discharge of Tombe; and Earhart's uncontroverted testimony that he did give substantial and effective weight to her recommendations on wage raises as well as in other matters, which is supported by evidence of instances when he confided in her, I conclude, although not free from doubt, that the evidence does not preponderate in favor of a finding that the duties of Ermence had changed sufficiently from those she enjoyed at the time she admittedly was a supervisor so as to render her a nonsupervisory employee within the meaning of the Act at the time of her discharge.¹⁶

This however is not the end of the problem. For, as Earhart's counsel correctly informed him when Earhart sought his advice some time between August 11 and 13 prior to the discharge of Ermence, supervisors at times are still subject to the protection of the Act. The record demonstrates for the reasons set forth below that his counsel's advice was correct and that this was in fact an occasion when the supervisor was protected.

Ermence, it will be recalled, was one of four girls under subpoena by the General Counsel at the original hearing on July 21 who were directed to return on July 22. As

¹⁶ While it may well be that Earhart ultimately, as he acquired additional experience, might have whittled down the job of Ermence to a true non-supervisory one, this was not done by August 16. And while Ermence signed a card for Local 11 in July of 1954, she had done likewise for Local 223 in 1953, a time when her supervisory status is conceded.

demonstrated, the other three were discriminatorily discharged on July 29 and August 13. The record does not disclose that Earhart bore any animus directed to Ermence on July 22, perhaps because his conduct in confiding in her indicated that he considered her sympathetic to Teamster interests, but, as set forth, his statements to Ermence clearly reveal the interpretation he placed upon the presence of Marian Henry, an employee of Security Fund, at the hearings on July 21 and 22. Thus, Earhart criticized Henry as associating with the General Counsel and the "enemy," namely counsel for Local 11, who were presenting a case in support of charges by Local 11 against various Respondents, including Security Fund.

The record discloses that shortly prior to the discharge of Ermence, Earhart was in receipt of information which could well have caused him to reassess the situation relative to Ermence. Thus, on August 6, Earhart, as found, informed Marian Henry that he had been informed by Teamster officials that she, Henry, was upset over the discharge of Olstad, heretofore found to be discriminatory. At the conclusion of this talk, Earhart warned her to stay out of international politics in the building. It was during this talk that Henry informed Earhart that Ermence had become ill over the discharge of Olstad and had left work as a result. Again, on August 13, the day Earhart discriminatorily discharged Henry, reference was made to Henry's alleged insubordination in talking to Crosby about the remodeling project. It is significant that in this talk, as Earhart admitted herein, Henry informed him that Ermence was on advance notice from Henry that she, Henry, proposed to speak to Crosby about the remodeling project.

Although Earhart testified that he decided to discharge Ermence during the week-end before Monday August 16, the record demonstrates that Earhart had the matter under prior consideration, namely at about the same time that he discriminatorily discharged Henry on August 13. For, as

he testified, he called his counsel relative to the extent of protection from discharge that a supervisor had under the Act, on a date he placed between August 11 and August 13. However, Ermence was not at work on August 13 and therefore was not available for discharge in person.

Turning to the one reason advanced by Earhart for the discharge of Ermence, a consideration of his testimony discloses that it was actually no reason at all. He claimed that he lost faith in her because he, Earhart, did not know what was going on in the office. He did not enlighten Ermence or this record as to what he, Earhart, should have known about the office and at this stage I am still unaware of what he referred to. He flatly refused to supply Ermence with a reason for her discharge. His testimony that he informed her he no longer had any "faith" in her stands unexplained, because there is no evidence that he at any time expressed any displeasure to Ermence over office matters not brought to his attention. Nor did he ever explain to her what was to be brought to his attention.

The most logical conclusion that manifests itself and, in fact, just about the only one that the evidence herein points to is that on or about August 13, at the time Earhart discriminatorily discharged Henry, as found above, because of her association with the General Counsel while under subpoena for the presentation of testimony in this case, Earhart concluded that Ermence, in whom he had previously closely confided his discriminatory motivation toward Henry, was apt to render the same service to the General Counsel as Henry by presenting testimony which would support the General Counsel's case against Respondents herein. I so find. Entitled to weight in arriving at this conclusion is Ermence's tenure and experience, the reliance Earhart admittedly and openly displayed in her ability to handle office matters, and the great extent to which he con-

fided in her. In the face of all this, there is simply no evidence in support of Earhart's claim herein. Earhart's loss of faith or confidence in Ermence can, on this record be equated only with a conclusion on his part that Ermence would present adverse testimony at a later stage of this hearing.¹⁷ I believe and find, that, but for this conclusion by Earhart, Ermence would not have been discharged.

Conclusions

All employees have the right of access to the processes of the Board and the right, if not duty, to testify in aid of a proceeding brought by the General Counsel against any invasion of their right to organize, which is guaranteed by public policy. As found, Ermence was not a rank-and-file employee. She was, however, under subpoena by the General Counsel and attended the hearings on July 21 and 22 quite obviously as a prospective witness for the General Counsel in the litigation of the alleged unfair labor practices by Security Fund and the other Respondents against rank-and-file employees who do have the full protection of the Act. The sole issue here is whether, by her discharge, Respondent Security Fund has interfered with, restrained and coerced the self-organizational rights of these other employees. I believe and find that it did. This is not, I might add, a case of divided loyalties in which event the conduct of Security Fund with respect to Ermence would be viewed differently. See, e. g., *Texas Co. v. N. L. R. B.*,

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198 F. 2d 540 (C. A. 9).

I find that the discharge of Ermence, following directly on the heels of the other discriminatory discharges of the

¹⁷ In fact Ermence concretely manifested this to International Representative Sweeney just prior to July 21 or 22 as appears below. However, although Sweeney was a regular visitor to the Security Fund office, there is no evidence that he discussed Ermence's termination with Earhart.

prospective witnesses of the General Counsel and particularly so, on the next work day after Earhart discriminatorily discharged Marian Henry for substantially the same reason as Ermence, plainly demonstrated to rank-and-file employees that her discharge was but a part of a plan to thwart their self-organizational activities. The net effect of this conduct would logically cause rank-and-file employees reasonably to fear that Security Fund would take similar action against them if they rendered similar obedience to a Board subpoena. I find that the discharge of Ermence constituted an invasion of the self-organizational rights of rank-and-file employees.

Stated in simplest terms, the case of Ermence involves, in its most direct sense, an attempt to prevent the Board from carrying out the Congressional policy entrusted to it, by procuring the attendance of witnesses at a Board hearing and by recording their testimony in the prescribed manner. A discharge intended or reasonably calculated to prevent the accomplishment of this policy inevitably restrains and coerces employees in the exercise of the rights guaranteed by the Act because it demonstrates to them that should they venture to testify concerning the unlawful conduct of their employer, they, in turn, may bring down upon themselves the extreme penalty of discharge. I find that the discharge of Ermence by Security Fund and its administrator, Earhart, under the circumstances present herein, inevitably constituted such a demonstration to the rank-and-file employees. *N. L. R. B. v. Talladega Cotton Factory, Inc.*, 213 F. 2d 209 (C. A. 5), and *N. L. R. B. v. Vail Manufacturing Co.*, 158 F. 2d 664 (C. A. 7), cert. denied 331 U. S. 835. Although the latter case was decided after the amendments to the Act, the former case clearly shows that no change was made in this respect.

As the court aptly pointed out in the *Talladega Cotton Factory* decision, "we see no reason why the Board in the exercise of its statutory discretion does not have the same remedial power to redress acts of indirect interference and

restraint of ordinary employees through the discharge of supervisors, as it admittedly has to redress acts of direct interference and restraint with the right of the same employees to uninhibited self-organization." The Court went on to say that a contrary claim "evinces undue preoccupation with the statutory definition [of supervisor] rather than with the underlying purpose and intent of the Act as a whole"

In view of the foregoing considerations, I find that Security Fund and its administrator, Earhart, have by the discharge of Ermence on August 16, 1954, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. I shall recommend the dismissal of the allegations against those Respondents insofar as they relate to Section 8 (a) (3) and (4) of the Act inasmuch as those Sections are directed to protection of employees in the direct sense.¹⁸

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For the reasons heretofore stated in considering the discharge of Marian Henry, I find that the discharge of Ermence constituted assistance to and support of Local 223, within the meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof, as alleged. In addition, there being no evidence that Respondent International or Respondent Sweeney directed, ratified or cause the discharge of Ermence, I shall recommend that the case against them, in this respect, be dismissed.

¹⁸ Of course, in the event that the Board concludes that Ermence was not in fact a supervisory employee at the time of her discharge, the record well warrants a finding that her discharge was violative of Section 8 (a) (3) and (4) of the Act as well, for the reasons previously stated herein in considering the cases of the three girls whose discharges shortly preceded hers. In addition, should it appear on her reinstatement that her duties have nondiscriminatorily become solely those of a rank-and-file employee, she would then be subject to the protection of the Act within the meaning of Section 8 (a) (3) and (4).

6. JUNE COOK

The complaint in Cases 36-CA-637, 638, and 639, further alleges that Respondent Local 206, on or about June 10, 1954, discriminatorily discharged June Cook because of her activities in behalf of Local 11, thereby violating Section 8 (a) (1) and (3) of the Act. The case of Cook is *sui generis* and in most respects involves considerations other than those present in the four cases heretofore discussed. Cook was one of two office clericals in the employ of Local 206. Financial Secretary Estabrook, who had hired her six and one-half years previously, asked her to resign on June 10, 1954. Cook, an impressive and straightforward witness, testified that on June 10 Estabrook asked for her resignation, stating that after conferring with Mrs. Crosby, the other office clerical and the wife of Clyde Crosby heretofore identified, he, Estabrook, had decided that Cook "was not qualified to do the work." According to Estabrook, he asked her to resign, stating that most of her work had been eliminated. I credit Cook's testimony here as elsewhere.

The General Counsel contends that Cook was discharged on June 10, 1954, because of her union sympathies and activities starting in 1953, after many months of maneuvering by Estabrook to eliminate her from his employ. Respondent Local 206 claims that she was discharged because of technological changes resulting from the installation of a new bookkeeping machine which eliminated a substantial portion of her duties as cashier and bookkeeper. Although the case of the General Counsel in this situation is not as strong as those of the four heretofore discussed, the defense of Respondent herein impresses me as singularly weak for reasons which follow.

Cook had been a member of Local 11 since sometime in 1947. During June of 1953, Financial Secretary Estabrook spoke to Cook and informed her that he was on the spot because someone had informed International Representa-

tive Sweeney that Cook had refused to join a Teamster local. Later that day, Estabrook gave Cook and Mrs. Crosby, the other office clerical, applications for Local 223 with instructions to fill them out and return them to Sweeney. Cook did so. In the latter part of June 1953 she was initiated into Local 223 in the presence of Crosby and Sweeney. One or the other of the two promised that the girls present would receive withdrawal cards from Local 11.

As indicated, Local 11 attempted early in 1953 to obtain another collective bargaining agreement from the various Teamster organizations in the Teamster building, consistent with their traditional representation of office employees in the building. Secretary-treasurer Beyer of Local 11 was greeted with evasive treatment by both Crosby and Sweeney, each of whom took turns evading responsibility in the matter and shunting Beyer to the other. Ultimately, negotiations broke down early in July of 1953 and Local 11 picketed the building during a 2-3 week period late in July and early in August with little or no effect.

On the first day of the picketing, a number of girls employed in the building refused to cross the picket line. After about 15 minutes, their respective employers appeared on the scene and directed them to report to work.

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The girls promptly obliged with the exception of two, Cook and Irene Manning; the latter was employed by four locals in the building, Local 223, and three others which are not involved herein. They remained outside the picket line for about 1 hour and then entered the building. It is this episode on which the General Counsel relies in attributing Cook's ultimate fall from grace with Local 206 after joining Local 223 and being initiated therein.

Cook took her 2-week vacation immediately after the foregoing episode, and, upon her return, noticed that Estabrook did not speak to her for 2 weeks. He broke the silence

thereafter, sometime in August, and proceed to ask for her resignation; stating, as Cook testified, that she "had put him on the spot . . . the picket line had caused quite a bit of trouble, and with me not going through it, that had caused him trouble." Cook replied that she would think it over and nothing further was done. However, Cook had been promised a raise by Estabrook prior to leaving on her vacation. This she did not receive, although, one day after her return from her vacation, a raise was given to Mrs. Crosby as well as to two assistant business agents in the office. In October of 1953, Estabrook again brought up the subject of her resignation, stating that if she would work until October 20 and resign at that time he would pay her salary through the month of November. He did not specifically advert to any reason for desiring to terminate her employment on this occasion, and Cook refused to resign.

Nothing further happened until the morning of June 10, 1954, when Estabrook again asked for her resignation, stating that he had conferred with Mrs. Crosby and that he had concluded that Cook "was not qualified to do the work." Estabrook said that, in the alternative, she could remain only until August 1, 1954, if she chose. Cook decided to leave, stating that she did not wish to stay until that date if she was not wanted. I find that she was in fact discharged on June 10, 1954, by Estabrook. This conversation constituted a final act on his part, for the alternative of working until August 1, as Estabrook posed it, left no option to Cook but to accept termination on the latter date for the same reason expressed by Estabrook on June 10, 1954. If the reason was discriminatory on June 10, 1954, Cook was not required to continue for some weeks under this discriminatory cloud with no avenue of escape open to her. *N. L. R. B. v. Newton*, 210 F. 2d 472 (C. A. 5). The following day, June 11, Cook was replaced by one Tombe, a bookkeeper discharged in May by Security Fund for in-

competence, including being a "sloppy" typist, as Earhart testified.

Respondent's primary contention herein is that the installation of a bookkeeping machine substantially reduced Cook's work. It is true that a bookkeeping machine was installed in the office of Local 206 in mid-April of 1954. In fact, similar machines were installed throughout the Teamster Building and there is no evidence that this mechanical change rendered any other girls in the building superfluous. Prior to the installation of the machine, the work was divided between Mrs. Crosby and Cook. The former did the bookkeeping, wrote out the checks, sent out contract notices to employers, and handled Estabrook's dictation and correspondence. Cook's duties were to wait on the window and receive dues payment paid in person by some of the large membership of 2,750 in this Local. She also handled the mail, and this included the receipt of dues payments by mail. Her duties, prior to the installation of the bookkeeping machine, required her to make out a receipt for the dues payment and post it on a ledger card; all items from the receipt book were also recorded by her in the day book. This posting took from one-half to two-thirds of her time. She also had the responsibility of keeping addresses and mailing lists for two publications up to date, these being the Teamster paper and the International

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magazine. In addition, she maintained the records of initiations and withdrawal cards issued to departing members.

After the installation of the machine, some of Cook's duties were eliminated. The machine did the actual posting, although Cook still had to punch and operate it. While the record discloses that the installation of the machine reduced Cook's duties in some degree, the record will not support a finding that its installation was a leading cause in bringing about her termination.

As demonstrated, Estabrook had been attempting to induce Cook to resign as far back as August of 1953 and again in October of that year. The presence of the machine obviously could not have been a factor in his engaging in such conduct at that time. Although Estabrook testified that the installation of the machine was under consideration for 6 to 8 months previously, the fact is that he tried to bring about the discharge of Cook long prior to its installation. Previously why he was reluctant to discharge her outright, the record does not disclose, whether because of her tenure, competence, or the fact that her father and Estabrook had long been friends. Moreover, in her terminal conversation with Estabrook on June 10, 1954, Cook had informed him that she had done the work customarily done by Mrs. Crosby when the latter was on vacation, thus demonstrating her versatility in the office. Estabrook did not comment on this. Nor was Mrs. Crosby, obviously well qualified to testify in the matter, called as a witness, although presumably available.

Respondent raises another reason herein, namely, the claim that Cook was out of practice on typing and shorthand and that, as a result, she did not perform these operations in the office. The record does disclose that when Cook was hired, Estabrook was on notice from Cook that she was out of practice in taking dictation.

Estabrook had offered on several occasions to pay her expenses to night school so that she could brush up on her shorthand, but Cook declined, stating, as was apparently the fact, that there was not enough work of this nature in the office to warrant her doing so; Cook pointed out to Estabrook that Mrs. Crosby handled all the dictation. Indeed, Cook testified that Estabrook last took up the question of night school with her approximately *2 years prior* to the date of her testimony herein on September 16, 1954. She was positive that there was no such conversation during the year preceding the date of her discharge. Estabrook

claimed that there had been such a conversation after the installation of the bookkeeping machine came under consideration.

Here, as well, Estabrook's testimony is not accepted. In addition to placing reliance on Cook's demeanor in crediting her, a consideration of the testimony of Estabrook serves only to further buttress Cook. He testified concerning an inquiry he allegedly made of Mary Ermence when he hired Tombe as a replacement for Cook and claimed that Ermence said that Tombe could do the work. Ermence, credited elsewhere, denied that he ever made any inquiry about Tombe. In addition, when being questioned as to why the girls working for Local 206 chose Local 223 in 1953 as a bargaining representative, at a time when he, Estabrook passed out the cards, Estabrook attributed this to the reason that Secretary Hildreth of Local 223 was the best looking man in the building; however, Hildreth did not become an official of Local 223 until February of 1954.

Noteworthy here as well is the fact that Estabrook on the following day, June 11, hired Tombe for Cook's job. Yet Earhart, her prior employer in Security Fund, who had discharged her late in May of 1954, had concluded not

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only that she was incompetent, but that her work was "sloppy," specifically so characterizing her typing. In fact, Earhart testified that she took no dictation and did not do "a great deal" of typing for Security Fund. But Earhart, as he testified, was contacted by Estabrook, who asked him about her qualifications and "indicated that she would be put to work in the building." There is nothing in his testimony to indicate that Earhart was anything but truthful with Estabrook on this occasion. Estabrook claimed that Ermence and Earhart both said she would be able to handle the work he had for her, but, as indicated, I credit Ermence's testimony that the topic was not raised by Estabrook with her.

Estabrook claimed that Tombe was doing substantially the same work that Cook had done, but that she had taken over some of Mrs. Crosby's work, involving occasional dictation, running the mimeograph machine, cutting stencils, and preparing contracts. He estimated that no more than 50 percent of Mrs. Crosby's time was taken up with dictation. It is significant that there is no evidence that Cook was not qualified to handle at least the last three of the four categories mentioned by Estabrook. As to the other category, Estabrook testified that Mrs. Crosby assigned Tombe such dictation and typing that she could not handle herself, and that Crosby reported to him that Tombe was working out well. However, as indicated, Mrs. Crosby did not testify herein.

On balance, I am not impressed with these defenses of Respondent. In Cook, Estabrook had an employee of 6½ years' tenure, who received a number of salary increases from Estabrook, and whom he admittedly had found to be "very capable . . . Mrs. Cook was excellent in the job of taking dues and in her posting. She did an excellent job." He added that she wrote an unusually fine hand. Why then, with the advent of the bookkeeping machine, was so competent an employee discarded and replaced with one unsatisfactory elsewhere in the building?

The answer appears when note is taken of the fact that Estabrook had been attempting to eliminate Cook from his employ *long before* the advent of the bookkeeping machine, and that his concern over her lack of shorthand was relatively ancient history. Although Estabrook's attempts to force her resignation were protracted over a long period of time, and this factor is indeed somewhat puzzling, a preponderance of the evidence impels the conclusion that one must look to events in 1953 for the cause of her discharge.

Cook was an employee of long tenure, who had received a number of wage increases from Estabrook. There had

been no criticism of her work whatsoever. Estabrook's satisfaction with Cook took a marked change when the picket line incident occurred in 1953. Immediately thereafter he did not speak to her for 2 weeks and withheld a wage raise previously promised, although it was given to the other employees in the office. That her respecting of the picket line was the cause of his dissatisfaction, he made quite clear when, during August, not long after the incident, he specifically asked her to resign, pointing out that it was her picket line activity that had put him on the spot. In fact, he admitted herein that her conduct on this occasion had embarrassed him and that he told her she had acted improperly. His subsequent attempts to induce her to resign were nothing more than repetitions of his earlier conduct, which was clearly related to her picket line activity.

I find, on a preponderance of the evidence, that this picket line activity was the true cause for her discharge, because it reasonably indicated that Cook's loyalty to and support of Local 223, the organization which Estabrook openly favored, was open to serious question, and that the assigned

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reasons were not the true reasons for her discharge. *N. L. R. B. v. Vail Manufacturing Co.*, 158 F. 2d 664, 6 (C. A. 7) cert. denied 334 U. S. 845. I find that by discharging June Cook on June 10, 1954, Respondent Local 206 has discriminated with respect to her hire and tenure of employment, thereby encouraging membership in Local 223 and discouraging membership in Local 11, and violating Section 8 (a) (3) of the Act. I further find that her discharge under the foregoing circumstances interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. See, *Bausch & Lomb Optical Co. v. N. L. R. B.*,—F. 2d—(C. A. 2), decided 12/1/54.¹⁰

D. *The Refusal to Bargain*

1. THE APPROPRIATE UNIT AND MAJORITY REPRESENTATION THEREIN

The complaint in Case 36-CA-648 alleges that Security Fund and Earhart refused to bargain with Local 11 as the representative of its employees in an appropriate unit. It alleges that all office and clerical employees of Security Fund, constituting its entire complement of personnel, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining. Although the answer of Respondents generally denies the appropriateness of this unit, Respondent has posed no active challenge to it on any ground. I find that the unit set forth in the complaint is a unit of the type customarily found appropriate by the Board in analogous cases and that it indeed constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. See *Texas Prudential Insurance Co.*, 109 NLRB No. 34.

The complaint further alleges that Local 11 represented the employees in the above-described appropriate unit on and after July 14, 1954. Turning to the actual composition of the unit, the parties in effect agree that as of July 14, there were 11 named employees in the unit. There is no problem as to 8 of the 11; the remaining 3 are Mary Ermence, Marian Henry, and Corinne Paullin. Ermence, as I have found, was a supervisor, and is therefore excluded from the unit.

Henry, as found, was discriminatorily discharged on August 13, 1954, and therefore retained her status as an employee and is included in the unit. If the Board should conclude that Ermence was in fact a rank-and-file employee during this period, she, as well, is to be included in the unit for the same reason as Henry. As to the third, Paullin, Earhart testified, on September 17, 1954, that Paullin had been on a maternity leave of absence since July 15, 1954, that she had had her child, and that she was due to return

on September 20. It is clear, and I find, that at the time material herein, namely July and August of 1954, Paullin had a reasonable expectation of continued employment and she is therefore to be included as an employee within the unit. Earhart further testified, and I find, that there were no hirings between July 14 and August 23. One other employee, Courtain, was hired at an undisclosed date either several days before or several days after August 23. I find therefore, that there were 10 employees, this figure including Henry and Paullin but excluding Ermence, in the unit between July 14 and August 23, 1954.

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As evidence of the majority representation of Local 11 in the appropriate unit, the General Counsel introduced in evidence cards signed by 9 of the 10 employees in the unit, not including Ermence, on dates between July 12 and 16 and the other 3 on August 2, 10, and 11. These cards were circulated in the building by Marian Henry, as heretofore set forth, during this period. They appeared to be in order and their authenticity was not challenged by Respondent, which did not object to their receipt in evidence. One of them, it may be noted, was signed by Patricia Schlaht at her home, and she identified her signature.

While Security Fund has made no specific contention in this regard, it did adduce testimony to the effect that a number of the employees of Security Fund were also members of Local 223. This presumably was to establish that Security Fund employees had signed dual designations, this serving to vitiate the designations of Local 11. To accept such a view, however, would be to utterly disregard the

* Respondent points out that Manning, who also respected the picket line in the same manner as Cook, was not discharged. However, she was not an employee of Local 206 or of Estabrook. Moreover, the fact that all persons in the same category are not subjected to discrimination does not constitute a defense to an act of discrimination. *N. L. R. B. v. Link-Belt Co.*, 311 U.S. 584, 602; *N. L. R. B. v. W. C. Nabors Co.*, 196 F. 2d 272 (C. A. 5), cert. denied 344 U.S. 805; and *Toledo Desk and Fixture Co.*, 65 NLRB 1086, 1108.

unfair labor practices heretofore found whereby Local 223 achieved its representation in the building and specifically among the employees of Security Fund in 1953.

Secretary Hildreth, of Local 223, testified that all but three of the Security Fund employees were dues paying members of his organization; the three exceptions were Ermence, Henry, and Heerman. It is significant, however, that none of the employees working for Security Fund joined Local 223 subsequent to July 12, 1954, the earliest date that cards were signed for Local 11 in 1954, with the exception of one Carter, and she was the only one of the Security Fund employees who did not join Local 11.

I have heretofore set forth how Mary Ermence, as office manager of Security Fund in 1953 had solicited membership for Local 223, passed out applications, picked up signed applications, uttered thinly veiled threats of economic reprisal for failure to sign up with Teamsters, and promised the employees benefits for affiliating with Teamsters, this conduct being violative of Section 8 (a) (1) and (2) of the Act. As a result, Local 223, which in January 1953 had no representation in the building, had by July of that year signed up all of the employees in the building but two or three, although the record discloses only the history of this activity at Security Fund and Local 206. And, as Hildreth testified, those employees of Security Fund who belonged to Local 223, save Carter, had belonged since an undetermined date in 1953. In addition, as will later appear, Local 223 made its lone employee join in March of 1954.

The record discloses that of those on the payroll in June of 1953, only four, not including Ermence, were employed as of July 14, 1954. They are Foster, Henry, Wagner, and Schlaht. Of those, only Henry and Schlaht testified herein, the former for the General Counsel and the latter for Respondents. Their testimony was in substantial agreement as to the unlawful method whereby they became affiliated

with Local 223 in 1953. And all 4 had voluntarily signed cards in 1954 for Local 11. Moreover, the testimony of Ermence, well supported, amply demonstrates the unlawful method she employed in 1953, as a supervisor to introduce all the employees of Security Fund to representation by Local 223. Respondent offered no evidence as to the circumstances under which any others in the unit were signed up in Local 223 and they did not testify herein. I conclude therefore, on the basis of a preponderance of the evidence, and in fact the only substantial evidence before me, that the membership of Local 223 was acquired in large measure if not entirely on the basis of unfair labor practices which Security Fund cannot plead in its defense.

Respondent has not attempted to "disentangle the consequences for which it was responsible from those from which it was immune." *N. L. R. B. v. Remington Rand, Inc.*, 94 F. 2d 862, 872 (C. A. 2); *Franks Brothers Co. v. N. L. R. B.*; 321 U. S. 702, and *Medo Photo Corp. v. N. L. R. B.*, 321 U. S. 678

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Moreover, the fact that in the face of these unfair labor practices, the employees of Security Fund did thereafter sign up with Local 11 and all of them but one, as Henry testified, voluntarily paid dues prior to July 21, 1954, demonstrates that their 1954 designations are entitled to considerable weight and that they have not been detracted from or weakened.

I find therefore that as of July 16, 1954, Local 11 was the representative of six employees in the appropriate unit, a clear majority, and that this majority was increased to nine by additional signatures on August 2, August 10, and August 11. I further find that on July 16, 1954, and at all material times thereafter, Local 11 was and is the exclusive representative of the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

2. THE REFUSAL TO BARGAIN

There is no conflict as to what took place when Local 11 attempted to achieve recognition in 1954 from Security Fund. On July 27, Local 11 had a clear majority and Secretary Treasurer James Beyer wrote to Earhart. He advised him that Local 11 represented a majority of the employees of Security Fund and asked him to specify a mutually agreeable time and place for negotiations toward an agreement between Security Fund and Local 11. Earhart promptly telephoned his counsel herein, Richard Morris, advised him of this request, and mailed Morris a copy of the letter. He also instructed Morris to reply to the letter and informed Morris he would rely on his judgment in the matter.

Morris replied to Beyer on July 29, stating that the letter had been referred to him by Earhart and said that Security Fund would recognize Local 11 at such time as "the National Labor Relations should properly designate you as the bargaining agent of an appropriate unit of the employees. . . ." Morris testified that the responsibility for the text of this letter was his own, it being his practice and custom to recommend to clients that they insist upon a board certification before recognizing a labor organization as a collective bargaining representative, this being done in order to give the client more protection under the Act.

On August 18 Beyer wrote to Earhart again. The text is as follows:

This letter is to advise you that Office Employees International Union, Local No. 11 herewith states that a proper bargaining unit of your operation is one composed of all office personnel employed by you in or about the situs of the Teamsters' Building at 1020 N. E. Third Avenue, Portland, 12, Oregon, exclusive of those employees in supervisory status.

We further advise you that our Union, Office Employees International Union, Local No. 11, represents a majority

of all employees in such bargaining unit. We herewith request that you recognize our Union as the bargaining agent for all employees in said bargaining unit and further request that you reply immediately to this letter advising that you recognize our Union as the bargaining agent for all such employees in said bargaining unit. We herewith offer to submit to you documented proof that our Union does so represent and has been requested to bargain for a majority of your employees in such aforesaid designated bargaining unit and request that you enter into negotiations for the purpose of arriving

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at a mutually satisfactory contract regarding hours of labor, wages and other working conditions and that you specify a time and place for such negotiations to be conducted.

On August 23 Morris replied to this letter stating that it, as well, had been referred to him. He stated, "You are again advised that if the National Labor Relations Board should determine that you are the designated bargaining agent for an appropriate unit of employees, you will be recognized by Mr. Earhart, Administrator, as such bargaining agent." As is apparent from the last exchange of letters, Local 11 offered to prove its majority to Security Fund and Morris, in his reply, did not challenge the majority representation of Local 11.

Conclusions

It is true that an employer entertaining a good faith doubt as to the appropriateness of a unit or the majority representation of a labor organization therein, may withhold recognition from that labor organization until it has achieved a certification through the processes of the Board. But such is not the case here simply because, as a matter of law, Respondent, Security Fund cannot be found to have entertained a good faith doubt of this nature.

Morris was the agent of Security Fund and he may not in equity disassociate himself from the unlawful conduct of his employer. His conclusion, as he testified, that Local 11 might have been unlawfully assisted, related to certain alleged assistance extended to Local 11 *prior* to the advent of Local 223 on the scene in 1953. It has previously been demonstrated how Local 11 was ousted in all practical effect from the Teamsters Building in 1953. Without passing upon this relatively ancient matter, the fact is that this alleged unlawful assistance to Local 11 prior to 1953 was followed by unfair labor practices on the part of Security Fund which contributed substantial assistance to Local 223 in 1953. These, in all logic, could not help but dissipate any prior assistance given Local 11, assuming it to have been such. Moreover, one year later, and *subsequent* to the illegal assistance given to Local 223, there was an almost unanimous designation of Local 11 by the employees of Security Fund, as set forth above, which was entirely divorced from any employer participation. Indeed, all but one of those who signed cards for Local 11 in 1954 voluntarily paid dues prior to July 21, 1954. This is more than can be said for those who joined Local 223 in 1953 and thereafter paid dues in that organization.

What I deem to be of considerable weight herein, is the anomalous situation that would result were the unfair labor practices of Security Fund, committed by Earhart, to be disregarded. An acceptance of the position of counsel for Security Fund would require Local 11 to proceed to an election in the face of concurrent unfair labor practices violative of Section 8 (a) (1), (2), (3) and (4) of the Act; these were directed to the dissipation of its majority and to its very elimination from the scene. It is particularly significant that these concurrent unfair labor practices by Earhart were committed shortly after receiving the initial request from Local 11 and less than 1 week before Morris' second reply to Local 11 and consisted of the discharge of

two employees under subpoena at a Board hearing, Henry and Ermence, both found to be violative of the Act.

It would be difficult to think of conduct more likely to influence other employees of Security Fund from appearing at a subsequent representation hearing, or more likely to restrain those employees from registering their true sym-

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pathies on the issue of union representation at the polls. And in all of this, it must be remembered that Security Fund and its counsel did not dispute the majority representation of Local 11 and in fact ignored its offer to prove this majority to the satisfaction of Security Fund.

While I do not doubt that Morris personally acted in good faith, equity requires that the onus of wrongdoing fall upon the perpetrator thereof rather than on the innocent victim. *N. L. R. B. v. Remington-Rand, Inc.*, 94 F. 2d 862, 872 (C. A. 2). The simple fact is that Security Fund is assessable with the conduct of its two agents, Earhart and Morris. *Safeway Stores, Inc.*, 110 NLRB No. 242. While one put off the majority representative and ignored its offer to prove its majority representation, the other engaged in unfair labor practices demonstrating marked hostility to the principles of collective bargaining, designed to undermine the majority of Local 11, and demonstrating an utter disregard of the processes of the Board. The Board and the courts have long recognized the inequity of requiring employees to register their views at the polls under such circumstances.

A court has stated in analogous circumstances, "It is true that the union upon meeting such refusal to bargain first adopted the course of filing a representation petition for certification by the Board under Section 9 of the Act. Later this representation petition was dismissed at the union's own request. But the right of employees to bargain collectively through an exclusive bargaining representative is not conditioned upon an antecedent certification by the Board where, as here, the majority status of the union is

clearly established otherwise, and the employer has no bona fide doubt of such majority status, but seeks to delay bargaining negotiations while resorting to various coercive tactics designed to dissipate the union majority support” *N. L. R. B. v. Ken Rose Motors, Inc.*, 193 F. 2d 769 (C. A. 1).²⁰

In view of the foregoing findings, I find that Respondent Security Fund and Respondent Earhart in denying recognition to Local 11 on July 29, 1954, and thereafter, as the representatives of its employees in an appropriate unit, have refused to bargain with Local 11 within the meaning of Section 8 (a) (5) of the Act, and by such conduct have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. *N. L. R. B. v. Howell Chevrolet Co.*, 204 F. 2d 79 (C. A. 9), affirmed 346 U. S. 482. The Court in the last-cited case stated, in a similar situation, “We think that the evidence abundantly supports the Board’s findings that the respondent did not withhold its recognition of the union because of a good faith doubt of the Union’s majority, and that its conduct generally was motivated by a desire to gain time in which to destroy the Union’s majority. See also *N. L. R. B. v. W. T. Grant Co.*, 199 F. 2d 711 (C. A. 9); *N. L. R. B. v. Star Beef Co.*, 193 F. 2d 8 (C. A. 1); *N. L. R. B. v. Clearfield Cheese Co., Inc.*, 213 F. 2d 70 (C. A. 3); *N. L. R. B. v. Top Mode Manufacturing Co.*, 203 F. 2d 403 (C. A. 3); *N. L. R. B. v. Everett Van Kleeck & Co., Inc.*, 189 F. 2d 516 (C. A. 2); *N. L. R. B. v. Poultry Enterprises, Inc.*, 207 F. 2d 522 (C. A. 5); *N. L. R. B. v. Southeastern Rubber Manufacturing Co.*, 213 F. 2d 11 (C. A. 5); *N. L. R. B. v. Stewart Oil Co.*, 207 F. 2d 8 (C. A. 5); *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732 (C.A.D.C.); *Safeway Stores, Inc.*, 99 NLRB 48; and *Squirrel Brand Co.*, 96 NLRB 179.

²⁰ Although the instant record is not clear on the matter, it appears that Local 11 similarly filed and withdrew a representation petition during this period.

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E. Other Unfair Labor Practices

1. BY LOCAL 223

The complaint in Case 36-CA-637, 638 and 639 has one other allegation which, as is apparent, is of a novel nature. It alleges that Teamster Local 223, in its capacity as an employer, has dominated and contributed unlawful support to itself in its other capacity as a labor organization, thereby violating Section 8 (a) (1) and (2) of the Act. Stated otherwise this involves a situation of a dual personality and alleges that Local 223 as an employer had compelled its own employee to join Local 223 and abandon Local 11. The complaint further alleges that Respondent International violated the same sections of the Act by this conduct; it appears to premise responsibility of the International upon the fact that it has had Local 223 under trusteeship for many years and still has. Local 223 has but one employee, Edith Manning, a combined secretary and bookkeeper who regularly devotes only a portion of her work week to that organization; the remainder of her time is devoted to work for three other Teamster locals in the building which are not involved herein. I find, nevertheless, that Manning was a regular employee of Local 223 within the meaning of the Act.

Manning's uncontroverted testimony is that, in March of 1954, Secretary Hildreth of Local 223 approached her and asked if she had any objection to becoming a member of Local 223, claiming that she was the only girl in the building who did not belong. Manning replied that "if that was necessary, I would join Local 223." She added that she would remain a member of Local 11 until she acquired a withdrawal card from that organization. Hildreth replied that she "might call and ask for a withdrawal card." Manning thereafter took steps to join Local 223 and also took steps to withdraw from Local 11. I find that this conversation between Hildreth and Manning, in the position of em-

ployer and employee respectively, when viewed in its proper perspective, constituted an instruction by Hildreth to Manning to join Local 223 and to withdraw from Local 11. Although this is the only act relied upon herein by the General Counsel, in view of the fact that Local 223 had but the one employee I do not view the situation as similar to others where, in view of unlawful acts being isolated, a remedial order is regarded by the Board as not warranted.

I find that by the foregoing conduct Local 223 has interfered with, restrained and coerced its only employee in the exercise of the right to be represented by a bargaining representative of her own choice. I further find, in view of this dichotomy, of Local 223 playing two roles insofar as its own employees are concerned, that Local 223 has in its capacity as an employer contributed unlawful support to itself in its capacity as a labor organization and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. I deem it unnecessary to pass on whether by the foregoing conduct Local 223 has dominated itself, assuming that to be possible.

A Court has stated that "collective bargaining becomes delusion and a snare if the employer, either directly or indirectly, is allowed to sit on both sides of the bargaining table; and, with the great advantage that he holds as the master of pay and promotions, he will be on both sides of the table if he is allowed to take any part whatever in the choice of bargaining representatives by the employees." *American Enka Corp. v. N. L. R. B.*, 119 F. 2d 60 (C. A. 4). I find that the foregoing conduct by Local 223 was violative of Section 8 (a) (1) and (2) of the Act. See *N. L. R. B. v. Wemyss*, 212 F. 2d 465 (C. A. 9) and *N. L. R. B. v. Stow Manufacturing Co.*,—F. 2d—(C. A. 2), decided 12/7/54.

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The record amply demonstrates that International Representative Sweeney was in complete control of the affairs of Local 223 and in fact had appointed Hildreth to his job in February of 1954. Accordingly, I find that the International, by virtue of its trusteeship of Local 223, has also violated Section 8 (a) (1) and (2) of the Act. *Albert Evans Trustee, et al.*, 110 NLRB No. 142.

2. BY THE INTERNATIONAL AND INTERNATIONAL
REPRESENTATIVE SWEENEY

The complaint in Case 36-CA-648 alleges that in July of 1954 Respondent International and Respondent Sweeney attempted to dissuade employees from honoring Board subpoenas in Case 36-CA-410, to dissuade them from testifying in the case, and induced them to withhold information when testifying and to perjure themselves, thereby violating Section 8 (a) (1) of the Act. As set forth above, Mary Ermence an employee of Security Fund, was under subpoena by the General Counsel to appear at the present hearing on July 21, 1954; she ultimately did appear on July 21 and 22 and testified at a later date, in part, concerning certain events in 1953 involving Sweeney.

As previously found, Ermence, a supervisory employee of Security Fund in 1953, was asked by Sweeney to ascertain whether the employees of Security Fund wished to join a Teamster organization. In addition, in May of 1953 Sweeney asked Ermence to distribute applications for membership in Teamsters and Ermence agreed to do so. Later that month, Sweeney brought her the applications and instructed her to distribute them to girls she was "sure of." Ermence did so, collected the signed applications, and returned them to Sweeney. Thereafter the girls and Ermence were initiated into the Teamster organization in the presence of Sweeney.

Turning to the merits of the allegation under consideration, about 1 week prior to the first day of the present hearing, Sweeney held a private conversation with Ermence and discussed her prospective testimony herein. Sweeney asked her who had given her the 1953 applications for Teamsters. Ermence replied that Sweeney had. Sweeney denied it, but when Ermence stuck to her story, he finally admitted that he had. Sweeney suggested to Ermence that she need not so testify on the witness stand. Ermence replied that she would not perjure herself on the stand. Sweeney stated that "employers" frequently lied on the stand, but Ermence refused to change her story. Sweeney asked her to cooperate by going on a long trip. Ermence refused, pointing out that her family commitments prevented such a step. Sweeney then suggested that she testify that she, Ermence, had asked Sweeney for the applications, that he then invited her to pick them up on his desk, and that she did so. Ermence protested that this was also contrary to fact; as heretofore found, Sweeney had brought her the applications and received the signed ones after she carried out his instructions. The talk ended on this note.²¹

I find that by the foregoing conduct Sweeney attempted to induce Ermence to change her testimony concerning the application blanks he had given her and proposed that she take a trip in order to avoid testifying at this hearing. I find that this conduct, directed toward a prospective wit-

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ness under subpoena at a Board hearing, constituted interference with, restraint and coercion by Respondent International and Respondent Sweeney of employees in the exer-

²¹ The foregoing findings are based upon the testimony of Ermence. I have heretofore set forth and considered in detail the conflict between the testimony of Ermence and that of Sweeney as to this episode. It would be cumulative to repeat it here save to state that for the reasons previously indicated I credit Ermence herein as elsewhere.

cise of the rights guaranteed by Section 7 of the Act and was violative of Section 8 (a) (1) thereof. See *Tri County Employers Association, et al.*, 103 NLRB 653, 673, and *Amory Garment Company, Inc.*, 80 NLRB 182, 199.

Sweeney was involved in another episode with prospective witness Barnes approximately 1 day prior to the hearing on July 21, 1954. Barnes, who was under subpoena by the General Counsel along with Ermence and others, testified, and I so find, that she had been given an application by Sweeney in May or June of 1953. On the indicated occasion in 1954, Sweeney, who had been advised by his counsel that Barnes would testify that Sweeney had given her the application blank for Teamsters, informed Barnes that her prospective testimony in the matter was false. Although I have credited Barnes as to what had actually taken place, I see no basis for finding an unfair labor practice predicated upon Sweeney's remarks to Barnes in 1954. I therefore base no adverse finding on this incident.²²

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in Section III above, occurring in connection with the operations of Respondents set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the various Respondents have engaged in a number of unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent Teamsters Security Administration Fund and Respondent William C. Earhart,

Administrator, have refused to bargain with Office Employees International Union, Local No. 11, as the exclusive representative of the employees of Teamsters Security Administration Fund in an appropriate unit. It will accordingly be recommended that they, upon request, bargain collectively with Local No. 11 as the exclusive representative of their employees with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed contract.

It has been found that Teamsters Security Administration Fund and Earhart have discriminated with respect to the hire and tenure of employment of Marian Henry and Mary Ermence on August 13 and August 16, 1954, respectively; that Teamsters Building Association, Inc., has discriminated with respect to the hire and tenure of employment of Virginia Olstad on July 29 and Irene Morcom Barnes on or about July 29, 1954; that Joint Council of Drivers, No. 37, has discriminated with respect to the hire and tenure of employment of Irene Morcom Barnes on August 13, 1954; and that Warehousemen Local No. 206, has discriminated with respect to the hire and tenure of

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employment of June Cook on June 10, 1954. I shall therefore recommend that each of the above-named Respondents offer its respective employees full and immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. It will further be recommended that each Respondent make its respective employee or employees whole for any loss of pay suffered by reason of the discrimination against them.

* The record does not disclose any basis for Sweeney's desire to disassociate himself from the distribution of the applications for Local 223.

Said loss of pay, based upon earnings which each would normally have earned from the date of the discrimination to the date of a proper offer of reinstatement, plus net earnings, shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. See *N. L. R. B. v. Seven-Up Bottling Co.*, 34 U. S. 344.²³

It has been found that various of Respondents have unlawfully assisted Local 223 and it will be recommended that they respectively cease and desist from such conduct. The General Counsel has urged that they also be ordered to refund dues paid by the employees of these Respondents to Local 223. There is, however, no evidence that an involuntary checkoff of dues was enforced or that employees were coerced into the payment of dues. Accordingly, refunds of these payments are not ordered. *Milco Undergarment Co.*, 106 NLRB No. 125, enf'd 212 F. 2d 801 (C. A. 3), and *Standard Transformer Co.*, 97 NLRB 669.

The unfair labor practices found above on the part of Respondents and the willingness of Respondents to resort to strongly unlawful methods to counteract an attempt by employees to achieve self-organization through a labor organization of their own choosing manifest a fundamental and extreme antipathy to the objectives of the Act and warrant an inference that the commission of other unfair labor practices may be anticipated in the future. It will therefore be recommended that Respondents be ordered to cease and desist from in any manner interfering with, restraining, or coercing employees of the Teamster Building in the exercise of the rights guaranteed by the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. Teamsters Security Administration Fund, William C. Earhart, Administrator; Joint Council of Drivers, No. 37;

Teamsters Building Association, Inc.; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and Warehousemen Local No. 206, constitute employers within the meaning of Section 2 (2) of the Act with respect to their own respective employees.

2. Office Employees International Union, Local No. 11, and Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, constitute labor organizations within the meaning of Section 2 (5) of the Act.

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3. All employees of Teamsters Security Administration Fund, Portland, Oregon, and its administrator, William C. Earhart, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Office Employees International Union, Local No. 11, was on July 16, 1954, and at all times thereafter has been, the exclusive representative of the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Office Employees International Union, Local No. 11, on July 29, 1954, and thereafter as the exclusive representative of its employees in an appropriate unit, Respondent Teamsters Security Administration Fund and Respondent William C. Earhart, Administrator, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By discriminating in regard to the hire and tenure

* While some mention was made that Cook and Olstad had not obtained subsequent employment, the record is vague and the issue of subsequent losses of earnings was not litigated before me. Hence, no consideration has been given herein to the matter which, in any event, is one for the compliance stage of the case.

of employment of Marian Henry on August 13, 1954, Teamsters Security Administration Fund and William C. Earhart, Administrator, have engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act.

7. By discriminating in regard to the hire and tenure of employment of Mary Ermence on August 16, 1954, Teamsters Security Administration Fund and William C. Earhart, Administrator, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

8. By discriminating in regard to the hire and tenure of employment of Virginia Olstad on July 29, 1954, Teamsters Building Association, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1), (3), and (4) of the Act.

9. By discriminating in regard to the hire and tenure of employment of Irene Morcom Barnes on or about July 29, 1954, Teamsters Building Association, Inc., has engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act.

10. By discriminating in regard to the hire and tenure of employment of June Cook on June 10, 1954, Warehousemen Local No. 206, has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

11. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, Teamsters Security Administration Fund; William C. Earhart, Administrator; Warehousemen Local No. 206; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; Joint Council of Drivers, No. 37; and Teamsters Building Association, Inc., have engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

12. By contributing unlawful support to Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, in its capacity as a labor organization; Teamsters Security Administration Fund; William C. Earhart, Administrator; Warehousemen Local No. 206; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, in its capacity as an employer; and Joint Council of Drivers, No. 37, have engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

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13. By seeking to have a prospective witness under subpoena at a Board proceeding change her testimony and evade testifying, Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Respondent John J. Sweeney have engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

14. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that:

I. Teamsters Security Administration Fund, its officers, agents, successors and assigns, and William C. Earhart, its administrator, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employees International Union, Local 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in

any manner with respect to hire, tenure or any term or condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(2) Refusing to bargain collectively with Office Employees International Union, Local No. 11, as the exclusive representative of all its employees, excluding supervisors, at its Portland Offices.

(3) Soliciting membership in, passing out and picking up applications for membership in, promising benefits for support of, and threatening economic reprisals for failure to join, Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request, bargain collectively with Office Employees International Union, Local No. 11, as the exclusive representative of all its employees, excluding supervisors, with respect to wages, rates of pay, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(2) Offer to Marian Henry and Mary Ermence immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by reason of the discrimination against them, in the manner set forth in the section of this report entitled "The remedy."

(3) Withhold all recognition from Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto, as the representative of its employees, until said organization is duly certified by the Board.

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(4) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix A.

II. Warehousemen Local 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its officers, representatives, and agents shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employees International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

(2) Soliciting membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to June Cook immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay suffered by reason of the discrimination against her, in the manner set forth in the section of this report entitled "The remedy."

(2) Withhold all recognition from Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto, as the representative of its employees, until said organization is certified by the Board.

(3) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix B.

III. Teamsters Building Association, Inc., its officers, agents, successors and assigns, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employees International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure or any term or condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Virginia Olstad and Irene Morcom Barnes immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay suffered by reason of the discrimination against them, in the manner set forth in the section of this report entitled "The remedy."

(2) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix C.

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IV. Joint Council of Drivers, No. 37, its officers, representatives and agents, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employees International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure or any term or

condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Irene Morcom Barnes immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, in the manner set forth in the section of this report entitled "The remedy."

(2) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix D.

V. Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, their officers, representatives, agents and trustees shall:

(a) Cease and desist from:

(1) Requiring its own employees to join Local No. 223, or any successor thereto, and to withdraw from Office Employees International Union, Local No. 11.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Withhold all recognition from said Local No. 223 as the representative of its own employees until duly certified by the Board.

(2) Post at their offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix E.

VI. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its officers.

representatives and agents, and John J. Sweeney, its agent, shall:

(a) Cease and desist from:

(1) Inducing prospective witnesses at a National Labor Relations Board proceeding to change their testimony and to absent themselves from such proceedings.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Post at the Teamsters office building in Portland, Oregon, copies of the notice attached hereto and marked Appendix F.

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VII. All of the above-entitled Respondents, named in these RECOMMENDATIONS, shall:

(a) Cease and desist from:

(1) In any manner interfering with, restraining, or coercing their respective employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Office Employees International Union, Local No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request made of those Respondents who have been ordered to reinstate employees make available to the

National Labor Relations Board or its agents, for examination and copying, all payroll social security time and personnel records necessary to determine the amounts of back pay due.

(2) Respectively sign copies of the notices heretofore specified, which are to be furnished by the Regional Director for the Nineteenth Region, post said notices immediately upon receipt thereof, and maintain them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respective Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(3) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, what steps they have taken to comply herewith.

It is recommended that, unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, the Respondents and each of them notifies the aforesaid Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring them to take such action.

Dated this 10 day of January 1955.

MARTIN S. BENNETT
Martin S. Bennett
Trial Examiner

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APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or term or condition of employment.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to MARIAN HENRY and MARY ERMENCE immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of our discrimination against them.

WE WILL bargain collectively, on request, with OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, as the exclusive representative of all our employees, excluding supervisors, with respect to wages, rates of pay, hours, or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT solicit membership in, passout and pick up applications for membership in, promise benefits for

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support of, and threaten economic reprisals for failure to join LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or any successor thereto, and we will withhold all recognition from said organization until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

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All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

TEAMSTERS SECURITY ADMINISTRATION FUND
(Employer)

Dated

By

(Representative)

(Title)

WILLIAM C. EARHART
(Administrator)

Dated

By

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

196a

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APPENDIX B

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

WE WILL offer to JUNE COOK immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of our discrimination against her.

WE WILL NOT solicit membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any successor thereto, and we will withhold all recognition from said organization until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYEES INTERNATIONAL UNION LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing; to engage

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in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

WAREHOUSEMEN LOCAL No. 206, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
(Employer)

Dated

By
(Representative)

(Title)

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APPENDIX C

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to VIRGINIA OLSTAD and IRENE MORCOM BARNES immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of our discrimination against them.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargain-

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

(1728)

ing or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

TEAMSTERS BUILDING ASSOCIATION, INC.
(Employer)

Dated

By
(Representative)

(Title)

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APPENDIX D

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to IRENE MORCOM BARNES immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of our discrimination against her.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

JOINT COUNCIL OF DRIVERS, No. 37
(Employer)

Dated _____

By _____
(Representative)

(Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material:

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APPENDIX E

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT require our employees to join LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or any successor thereto; or to withdraw from OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, and we will withhold all recognition from said LOCAL No. 223, as the representative of our employees, until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

affected by an agreement executed in conformity with
Section 8 (a) (3) of the Act.

LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS
(Employer)

Dated

By
(Representative)

(Title)

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL
(Employer)

Dated

By
(Representative)

(Title)

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APPENDIX F

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to
effectuate the policies of the National Labor Relations Act,
we hereby notify our employees that:

WE WILL NOT induce prospective witnesses at a National
Labor Relations Board proceeding to change their testi-
mony and to absent themselves from such proceedings.

WE WILL NOT in any manner interfere with, restrain,
or coerce our employees in the exercise of the right to self-

This notice must remain posted for 60 days from the date hereof, and must
not be altered, defaced, or covered by any other material.

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organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as such right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL
(Employer)

Dated

By
(Representative)

(Title)

JOHN J. SWEENEY

Dated

By

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EABHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSE LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.
and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS
and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37
and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY, and

OREGON TEAMSTERS' SECURITY PLAN OFFICE, and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND
and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

**ORDER TRANSFERRING CASE TO THE
NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled cases having been held before a duly designated Trial Examiner and the Intermediate Report and Recommended Order of the said Trial Examiner, a copy of which is annexed hereto having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 102.45 of National Labor Relations Board Rules and Regulations that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C. January 10, 1955.

By direction of the Board:

FRANK M. KLEILER
Executive Secretary

NOTE: Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Rules and Regulations appearing on the page attached hereto.

Exceptions to the Intermediate Report in these cases must be received by the Board in Washington, D. C., on or before February 2, 1955.

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**EXCERPTS FROM RULES AND REGULATIONS OF
NATIONAL LABOR RELATIONS BOARD****SERIES 6**

Section 102.46 *Exception or supporting briefs; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exceptions; oral arguments.*—(a) Within 20 days or within such further period as the Board may allow from the date of the service of the order transferring the case to the Board, pursuant to Section 102.45, any party may (in accordance with Section 10 (c) of the act and Section 102.82 and Section 102.83 of these rules) file with the Board in Washington, D. C., seven copies of a statement in writing setting forth exceptions to the intermediate report and recommended order or to any other part of the record or proceedings (including rulings upon all motions or objections), together with seven copies of a brief in support of said exceptions and immediately upon such filing copies shall be served on each of the other parties; and any party may, within the same period, file seven copies of a brief in support of the intermediate report and recommended order. Copies of such exceptions and briefs shall immediately be served on each of the other parties. Statements of exceptions and briefs shall designate by precise citation of *page and line* the portions of the record relied upon. Upon special leave of the Board, any party may file a reply brief upon such terms as the Board may impose. Requests for such leave or for extension of the time in which to file exceptions or briefs under authority of this section shall be in writing and copies thereof shall be immediately served on each of the other parties.

(b) No matter not included in a statement of exceptions may thereafter be urged before the Board, or in any further proceedings.

(c) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions filed pursuant to the provisions of subparagraph (a) hereof. The Board shall notify the parties of the time and place of oral argument, if such permission is granted.

(d) Oral arguments are limited to 30 minutes for each party entitled to participate. No request for additional time will be granted unless timely application is made in advance of oral argument.

(e) Exceptions to intermediate reports and recommended orders, or to the record, briefs in support of exceptions, and briefs in support of intermediate reports and recommended orders shall be legibly printed or otherwise legibly duplicated: Provided, however, *that carbon copies of typewritten matter shall not be filed, and if submitted will not be accepted.*

Section 102.47 *Filing of motion after transfer of case to Board.*—All motions filed after the case has been transferred to the Board pursuant to Section 102.45 shall be filed with the Board in Washington, D. C., by transmitting seven copies thereof, together with an affidavit of service upon each of the parties. Such motions shall be legibly printed or otherwise duplicated; *Provided, however, That carbon copies of typewritten matter shall not be filed, and if submitted will not be accepted.*

Section 102.48 *Action of Board upon expiration of time to file exceptions to intermediate report.*—(a) In the event no statement of exceptions is filed as herein provided, the findings, conclusions, and recommendations of the trial examiner as contained in his intermediate report and recommended order shall be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes. However, the Board may, in its discretion, order such case closed upon compliance.

(b) Upon the filing of a statement of exceptions and briefs, as provided in Section 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may close the case upon compliance with recommendations of the intermediate report or may make other disposition of the case.

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Section 102.80 *Service of process and papers, proof of service.*—Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

Section 102.81 *Same; by parties; proof of service.*—Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

Section 102.82 *Date of service; filing of proof of service.*—The date of service shall be the day when the matter served is deposited in the United States mail, or is delivered in person, as the case may be. In computing the time from such date, the provisions of section 102.83 apply.

(1783)

1783

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Richard R. Morris.....
(Signature or name of addressee)

2 Lucille Brisbane.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

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1 Anderson, Franklin & Landye.....
(Signature or name of addressee)

2 J. Slater.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

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(1784)

1 Bassett, Geisness & Vance.....
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2 By G. Roper.....
(Signature of addressee's agent—Agent should enter addressee's
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Date of delivery.....5-13, 1955..

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1 Office Employees Int'l Union #11.....
(Signature or name of addressee)

2 L. E. Ellis.....
(Signature of addressee's agent—Agent should enter addressee's
name on line ONE above)

Date of delivery.....May 12, 1955..

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1784

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1 Bailey, Lezak & Swish.....
(Signature or name of addressee)

2 S. Young.....
(Signature of addressee's agent—Agent should enter addressee's
name on line ONE above)

(1784)

Date of delivery.....5-13, 1955..

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1 NLRB
(Signature or name of addressee)

2 M. Klippel
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

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RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB
(Signature or name of addressee)

2 Janice J. Weigel.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....5-13, 1955..

.....

1785

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

ORAL ARGUMENT APPEARANCE SHEET

Date: 24 May 1955

Time Began: 10:00 A.M. Ended

CASE NAME

OREGON TEAMSTERS' SECURITY PLAN OFFICE, and
 WAREHOUSEMEN LOCAL No. 206, Affiliated With The
 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
 WAREHOUSEMEN AND HELPERS OF AMERICA

Case Number 36-CA-410, 36-CA-637, 36-CA-638,
 36-CA-639, 36-CA-647, 36-CA-648

BOARD MEMBERS PRESENT

1. Guy Farmer
2. Abe Murdock
3. Ivar H. Peterson
4. Philip Ray Rodgers
5. Boyd Leedom

APPEARANCES:

*Respondent Oregon Teamsters Security Plan Office, and
 William C. Earhart, Administrator*

Represented by

Name *Richard R. Morris, Esquire*

Address *618 Failing Building, Portland 4, Oregon*

Name *James Landye, Esquire* — Warehousemen

Local No. 206

Address *333 American Bank Building, Portland,
 Oregon*

(1786)

*Respondent International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of America,
AFL, and its Local No. 223*

Represented by

Name Samuel B. Bassett, Esquire

*Address New World Life Building, Seattle 4, Wash-
ington*

*Charging Party Office Employees International Union,
Local No. 11*

Name Joseph Finley, Esquire

Address 810—18th Street, N.W., Washington, D. C.

Charging Party

Represented by

Name

Address

Appearing on behalf of General Council

Name Mr. M. Mallet-Prevost

*Address National Labor Relations Board, Washing-
ton, D. C.*

1786

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and TEAMSTERS BUILDING ASSOCIATION, INC.
and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY,
and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
and WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

DECISION AND ORDER

On January 10, 1955, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and 113

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NLRB No. 111 recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions together with supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record herein. The Board finds that it will not effectuate the policies of the Act to assert jurisdiction in this proceeding, and will, for the reasons hereinafter stated, dismiss the complaints herein in their entirety.

This is the first proceeding to be decided by the Board in its 20-year history in which labor organizations have been charged with committing unfair labor practices as employers in dealing with their own employees.

The Respondents herein are:

1. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called the International and its representative, John J. Sweeney.

2. Teamsters' Locals No. 206 and No. 223, which represent employees in the Portland, Oregon, area.

3. Teamsters' Joint Council of Drivers No. 37, hereinafter called Joint Council, which coordinates the activities of 23 Teamster locals in Oregon and Washington.

4. Oregon Teamsters' Security Plan Office, hereinafter called Security Plan Office, which is the name assumed by an organization, consisting at the time of the hearing in this case of an administrator, Respondent Earhart, and a staff

of office and clerical employees. With the aid of this staff, Earhart administers 18 trust funds established, pursuant to Section 302 of the Taft-Hartley Act, by collective bargaining agreements between various Teamster locals and employers in Oregon, Washington, Idaho and Montana.

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Under the applicable trust agreements the administrator of these funds is appointed by the trustees, half of whom are designated by Teamsters, the balance by the interested employers. With contributions to the trust fund furnished by the employers, the administrator purchases health and welfare insurance policies for the employee-beneficiaries of the trust, and his office processes and pays claims under these policies.

5. Teamsters Building Association, Inc., hereinafter called Building Association, which is a nonprofit corporation, owning and operating a small office building in Portland, Oregon. All the stock of this corporation is owned by 6 Teamster locals. All the tenants of this office building are exclusively Teamster organizations, except for Security Plan Office.

The Trial Examiner found that all the Respondents were "employers" within the meaning of section 2 (2) of the Act, which provides that the term "employer" is used in the Act does not include "any labor organization (*other than when acting as an employer*), or anyone acting in the capacity of officer or agent of such labor organization" (emphasis added). The Trial Examiner construed this parenthetical language to mean that, when acting as employers with relation to their own employees, labor organizations are subject to the proscriptions of Section 8 (a) of the Act applicable to employers generally. The Trial Examiner found also that all the Respondents were engaged in commerce. With regard to the further question whether it would effectuate the policies of the Act to assert jurisdiction over the

(1789)

Respondents, the Trial Examiner deemed it proper to apply to them the same jurisdictional standards as the Board has heretofore applied to employers generally. Applying these standards, the Trial Examiner found that all the Respondents except Security Plan Office were an integral part of a multistate enterprise, consisting of the International and all its affiliates, and that the annual outflow of initiation fees and per capita taxes from its affiliates to the International's headquarters in Washington, D. C., (\$6,000,000) was more than sufficient to meet the Board's applicable minimum requirement (\$250,000) for asserting jurisdiction over a multistate enterprise.¹ With regard to

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Security Plan Office, the Trial Examiner relied on the fact that from its office in Portland, Oregon, it remitted to an insurance company in California policy premiums at a rate in excess of \$2,000,000 per annum, which was more than sufficient to meet the minimum outflow requirement applicable under the Board's standards to an independent enterprise (\$50,000).² The Trial Examiner, accordingly, concluded that it would effectuate the policies of the Act to assert jurisdiction over all the Respondents.

The Respondents' except to the Trial Examiner's foregoing jurisdictional findings. We find merit in these exceptions.

We agree with the Trial Examiner's general interpretation of Section 2 (2) of the Act that labor organizations are "employers" with respect to their own employees. However, Board assertion of its jurisdiction over the Respondents in this case, as in all cases, depends upon whether the Respondents, as employers, are engaged in commerce or in activities affecting commerce, and, if so, whether the policies of the Act will be effectuated by assert-

¹ See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

² *Ibid.*

ing jurisdiction over them. Demonstrably, the mere inclusion of labor unions in the statutory definition of "employer" does not constitute a legislative ukase³ that, in all instances, their operations affect commerce and that assertion of the Board's jurisdiction over unions will effectuate the policies of the Act.

We consider the limited inclusion of labor organizations in the Act's definition of an "employer" to be consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine whether the operations of a union-employer, like any other employer, affect commerce within the meaning of the Statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act.

All of the Respondents in this case, including the Building Association and the Security Plan Office, are non-profit organizations. The relevant transactions of the Respondent International and its Locals consist of the interstate transmission of member initiation fees and per capita taxes from the Locals to the International. The Security Plan Office remits employees' policy premiums

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across State lines to an insurance carrier. The Joint Council and the Building Association have virtually no interstate inflow or outflow of funds.

Each Respondent exists and operates for the benefit of Teamsters members and other employees in bargaining units the Teamsters represents. The basic aim and function of the International, Joint Council, and Locals is to improve the working conditions of workers, increase their job security, and otherwise promote their general welfare. The

Security Plan Office is a fiduciary engaged essentially in administering trust funds established by collective bargaining agreements pursuant to the provisions of Section 302 of the Act. The operations of the Security Plan Office constitute a typical labor union function in furtherance of employee welfare. The Building Association is an instrumentality of six stockholders, Local 206 and five other Teamsters Locals, none of which participates in any commercial transactions.

In these circumstances, we believe that, if the Respondents are to be treated like any group of employers for which the Board has established jurisdictional criteria, that group must be the one categorized as nonprofit organizations. The standards for nonprofit employers are clear;³ the Board, with legislative approval, asserts jurisdiction over nonprofit organizations "only in exceptional circumstances and in connection with purely commercial activities of such organizations."⁴ The Respondents' activities directed to advancement of employee interests are, obviously, not substantial engagement in a commercial venture within the contemplation of the Board's jurisdictional principles for nonprofit employers.⁵

We find accordingly, that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been established.

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Moreover, even assuming that the Board's jurisdictional standards for nonprofit organizations should not be applied

³ *Lutheran Church, Missouri Synod*, 109 NLRB 659; *Armour Research Foundation of Illinois Institute of Technology*, 107 NLRB 1052; *California Institute of Technology*, 102 NLRB 1402; *Philadelphia Orchestra Association*, 97 NLRB 548; *The Trustees of Columbia University in the City of New York*, 97 NLRB 424.

⁴ House Report No. 510, 80th Cong. 1st Sess., 32 (1947).

⁵ Cf., *Bausch & Lomb Optical Company*, 108 NLRB 1555, wherein the labor organization involved was engaged in the manufacture and sale of optical products.

to the Respondents, we would not assert jurisdiction over their operations in this case. If the standards for nonprofit employers generally are not applicable to the nonprofit Respondents, we do not deem applicable the existing Board jurisdictional criteria for any other type of employer. The Board's overall jurisdictional plan takes cognizance of different types of employer operations. There are, for example, different standards for manufacturing companies, public utilities, transportation companies, and others. We do not believe that labor organizations, which, when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme, should be made subject to any of the standards originated for business organizations. Accordingly, we would, at least, require for labor organizations as employers the establishment of a jurisdictional standard contemplating the singular characteristics of their institutional operations. In presenting this case for Board determination the General Counsel failed to suggest any such standard.

In light of these considerations, we shall dismiss, in their entirety, the complaints against all the Respondents.

ORDER

Upon the entire record in this proceeding, and pursuant to Section 10 (c) of the National Labor Relations Act, as

*With respect to Respondent Building Association, the record shows that it serves the tenants in the small office building it owns and operates. If we were to apply to Building Association, standing alone, the Board's standard for employers operating office buildings, we would not assert jurisdiction. In *McKinney Avenue Realty Company (City National Bank)*, 110 NLRB 547, the Board ruled it would assert jurisdiction over an office building operation only when the operator of the building is otherwise engaged in commerce and uses the building primarily to house its own offices. As noted above, the Building Association itself is not engaged in commerce nor does the record show any transactions in commerce by any of its stockholders.

*To the extent inconsistent herewith, the decision in *Air Line Pilots Association, International*, 97 NLRB 929, is hereby overruled.

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amended, the National Labor Relations Board hereby orders that the complaints in Cases Nos. 36-CA-410, 36-CA-637, 36-CA-638, 36-CA-639, 36-CA-647 and 36-CA-648, be, and they hereby are, dismissed in their entirety.

Dated, Washington, D. C., Aug. 25, 1955.

GUY FARMER,

Chairman

IVAR H. PETERSON,

Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

ABE MURDOCK, MEMBER, concurring:

I concur in the result dismissing the complaint herein, but on more limited grounds than those set forth in the main opinion.

In my opinion, after careful reconsideration of the issue,^{*} Congress did not intend, either in the Wagner Act or the Taft-Hartley Act, to regulate relations between unions and such employees as they utilize in their normal collective bargaining activities. When a union leaves its normal role as a collective bargaining agency, and embarks on a commercial enterprise, however, it obviously cannot carry into that field its immunity as a collective bargaining agency.

I note that my dissenting colleagues quote extensively from legislative history of pre-Wagner Act bills in coming to the opposite conclusion.^{*} However, the legislative history of the Wagner Act itself is the only sure guide to the intent of the Congress which enacted that Act. Yet my dissenting colleagues fail to quote the pertinent section of the Senate Report thereon.

^{*} In 1951, I signed the Board's opinion in *Airline Pilots Association*, 97 NLRB 929, where the issue arose in a representation proceeding.

The Senate Committee Report on S. 1958 explained the exclusion of labor organizations from the definition of "employer" in Section 2(2) of the Act in these words:

The term "employer" excludes labor organizations, their officers, and agents (*except in the extreme cases where they are acting as employers in relation to their own employees*). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions. (Emphasis supplied.)^{*}

In other words, unions had to be generally excluded from the definition of "employer" or they would run afoul of Section 8 (a) (1) and (2) by attempting to organize the employees of other employers, either on their own behalf or in behalf of another union. Only one exception to this blanket exclusion of unions from the definition of "employer" is made—"in *extreme cases* where they are act-

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ing as employers in relation to their own employees." Had Congress intended that in all cases unions should be regulated as employers in relation to their own employees, it obviously would simply have said this without qualification. But instead it limited their inclusion to "extreme cases." Plainly the word "extreme" must be given some effect in determining what Congress intended rather than ignoring it or reading it out as our dissenting colleagues necessarily do. There is nothing "extreme" or unusual in a union having employees in carrying on its normal collective bargaining functions. At the minimum unions commonly have office and clerical employees and paid organizers, as Congress plainly knew. Therefore Congress must have been talking about something else when it made reference to "extreme cases" where they are acting as employers in

^{*} Board compilation of Legislative History of NLRA, 1935, p. 2305.

The person or party serving the papers or process on other parties in conformance with Sections 102.80 and 102.81 shall make proof of service thereof to the Board promptly and in any event within 24 hours after the return post-office receipt or other evidence for such proof of service comes into the possession of the party making the service. Failure to make proof of service does not affect the validity of the service.

. Section 102.83 *Time; additional time after service by mail.*—In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event, the period runs until the end of the next day, which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. For the purpose of this section a Saturday on which the Board's offices are not open for business shall be considered as a holiday, but a half holiday shall be considered as other days and not as a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period, provided however, that 3 days shall not be added if any extension of such time may have been granted.

When the act or any of these rules requires the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

1734

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSE LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.
and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS
and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37
and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

(1734)

and its Agent, JOHN J. SWEENEY, and
OREGON TEAMSTERS' SECURITY PLAN OFFICE, and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND
and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

AFFIDAVIT OF SERVICE OF INTERMEDIATE
REPORT & RECOMMENDED ORDER and (Order Trans-
ferring Cases to NLRB).

DATE OF MAILING January 10, 1955

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esq.
618 Failing Bldg.,
Portland 4, Oregon

69966

PLAIN MAIL TO:

Oregon Teamsters Secy. Plan Office & Wm.
C. Earhart, Administrator thereof, and
Teamsters Secy. Admn. Fund; and Ware-
housemen Local #206, affl. w/IBTCWHA,
1020 N.E. Third Avenue, Portland 12, Oregon

Anderson, Franklin & Landye
Att: James Landye, Esq.
333 American Bank Bldg.
Portland, Oregon

(1734)

69967

Intl. Bro. of Teamsters, Chauffeurs, Whse-
men & Hlps. of Amer., AFL and Teamsters
Bldg. Assn. Inc.
1020 N.E. Third Avenue, Portland 12, Oregon

Bassett, Geisness & Vance
Att: Samuel B. Bassett, Esq.
New World Life Bldg.
Seattle 4, Washington

69968

Intl. Bro. of Teamsters, Chauffeurs, Whse-
men & Hlps. of Amer., AFL, and its Local
#223, Grocery, Meat, Motorcycle and Misc.
Drivers
1020 N.E. Third Avenue, Portland 12, Oregon
Warehousemen Local #206, affl. w/IBTC-
WHA, AFL
1020 N.E. Third Avenue, Portland 12, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esq.
1130 Southwest 3rd
Portland, Oregon

69969

Intl. Bro. of Teamsters, Chauffeurs, Whse-
men & Hlps. of Amer., AFL, and Joint Coun-
cil of Drivers No. 37
1020 N.E. Third Avenue, Portland 12, Oregon

NLRB; 36th Sub-region
U. S. Court House (new)
620 S.W. Main St.
Portland 5, Oregon

69970

Intl. Bro. of Teamsters, Chauffeurs, Whse-
men & Hlps. of Amer., AFL, and its Agt.
John J. Sweeney and Oregon Teamsters
Secy. Plan Office and Wm. C. Earhart,
Admin., and of Teamsters Secy. Admn. Fund
1020 N.E. Third Avenue, Portland 12, Oregon

NLRB—19th Region
407 U. S. Court House
5th Ave. & Spring
Seattle 4, Wash.

69971

Office Employees Intl. Union, Local #11
Att: James N. Beyer, Secy.-Treas.
1008 S. W. Sixth Ave., Portland, Oregon

Div. of Trial Examiners, NLRB
206 U. S. Appraisers Bldg.
San Francisco 11, Calif.

69972

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, AFL
100 Indiana Avenue, N.W., Washington, D. C.

Subscribed and sworn to before me this 10th day of
January, 1955.

/s/ JAMES ARMISTEAD

By /s/ VINCENT E. THOMPSON

Vincent E. Thompson,

Designated Agent

National Labor Relations Board

1735

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Richard R. Morris.....
(Signature or name of addressee)

2 Thomas J. Moore.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Jan 11, 1955..

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Anderson, Franklin & Landye.....
(Signature or name of addressee)

2 Fitzgerald.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Jan 11, 1955..

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bassett, Geisness & Vance.....
(Signature or name of addressee)

(1736)

2 By G. Roper.....
(Signature of addressee's agent—Agent should enter addressee's
name on line ONE above)

Date of delivery.....Jan 12, 1955..
.....

1736

RETURN RECEIPT

Received from the Postmaster the Registered or Insured
Article, the number of which appears on the face of this
Card.

1 Bailey and Lezak.....
(Signature or name of addressee)

2 M. Simpson.....
(Signature of addressee's agent—Agent should enter addressee's
name on line ONE above)

Date of delivery.....1-12, 1955..
.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured
Article, the number of which appears on the face of this
Card.

1 NLRB.....
(Signature or name of addressee)

2 M. Dannemiller.....
(Signature of addressee's agent—Agent should enter addressee's
name on line ONE above)

Date of delivery.....1-12, 1955..
.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB
(Signature or name of addressee)

2 Janice J. Weigel
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....1-12, 1955..

1778

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

**OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and**

Case No. 36-CA-637

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.
and**

Case No. 36-CA-638

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,**

(1779)

**and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS
and**

Case No. 36-CA-639

**WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and**

Case No. 36-CA-647

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37
and**

Case No. 36-CA-648

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY,
and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
and WILLIAM C. EHRHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND
and**

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

1779

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under the National Labor Relations Act, as amended, a hearing will be held before the National Labor Relations Board on Tuesday, May 24, 1955, at 10:00 a.m., in Room 2030, Health, Education and Welfare Building, South, between 3rd and 4th Streets, Southwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one hour for the respondents, to be

shared or divided among them; one-half hour for the party which filed the charge; and one-half hour for the General Counsel.

While each party will be free to use its time in arguing whatever points it chooses, the Board Members are primarily interested in the legal and policy considerations bearing upon the following questions:

1. Are the respondents in this proceeding employers under Section 2 (2) of the Act?

2. By defining employers to include labor organizations "when acting as an employer" did Congress intend to treat labor organizations as employers only with respect to their employees engaged in operations other than normal labor union functions?

3. Are the employees involved in this proceeding engaged in normal labor union functions or in commercial functions?

Dated, Washington, D. C., May 11, 1955.

By direction of the Board:

FRANK M. KLEILER
Executive Secretary

1780

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SEE ATTACHED SHEETS

AFFIDAVIT OF SERVICE OF NOTICE OF HEARING

DATE OF MAILING May 11, 1955.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled docu-

(1780)

ment(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esquire
618 Failing Building
Portland 4, Oregon

69978

Anderson, Franklin & Landye
Att: James Landye, Esquire
333 American Bank Building
Portland, Oregon

69979

PLAIN MAIL TO:

Oregon Teamsters' Security Plan Office and
William C. Earhart, administrator thereof,
and Teamsters Security Administration
Fund and Warehousemen Local No. 206,
a/w

the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America
1020 N. E. Third Avenue
Portland 12, Oregon

Bassett, Geisness & Vance
Att: Samuel B. Bassett, Esquire
New World Life Building
Seattle 4, Washington

69980

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, AFL, and Teamsters Building
Association, Inc.
1020 N. E. Third Avenue
Portland 12, Oregon

Office Employees International
Union, Local #11
Att: Mr. James N. Beyer
1008 S. W. Sixth Avenue
Portland, Oregon

69981

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, AFL, and its Local No. 223,
Grocery, Meat, Motorcycle and Miscellaneous Drivers
1020 N. E. Third Avenue
Portland 12, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esquire
1130 Southwest 3rd
Portland, Oregon

69982

Warehousemen Local No. 206 a/w
IBTCWHA, AFL
1020 N. E. Third Avenue
Portland 12, Oregon

NLRB—36th Sub Region
Room 326, U. S. Court House
620 S. W. Main Street
Portland 4, Oregon

69983

International Brotherhood of Teamsters,
Chauffeurs, Whsemen & Hlprs. of Amer.,
AFL, and Joint Council of Drivers No. 37
1020 N. E. Third Avenue
Portland 12, Oregon

(1781)

NLRB—19th Region

69984

(over)

/s/ JAMES ARMISTEAD

Subscribed ~~and~~ sworn to before me this 11th day of
May, 1955.

VINCENT E. THOMPSON
Designated Agent
National Labor Relations Board

1781

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers
of America, AFL, and its agent,
John J. Sweeney and Oregon Teamsters Security
Plan Office and William C. Earhart, Administrator
and of Teamsters Security Administration Fund,
1020 N. E. Third Avenue
Portland 12, Oregon

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and
Helpers of America, AFL
100 Indiana Avenue, N. W.
Washington, D. C.

1782

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410
OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,

and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY,
and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
and WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

relation to their own employees. Such "extreme cases" do exist where unions have departed from their traditional role and embarked on commercial enterprises—banks for example—where they have employees in the same context as any other industrial employer.¹⁰ Plainly then, this exceptional and limited area must be what Congress had in mind. As such, it is the sole exception in which unions are included in the definition of "employer" and are subject to the 8 (a) sections of the Act. Strongly supporting this view is the admitted—and oft-criticized-fact, that the Wagner Act was intended to regulate employers in the interest of employees and unions—not to regulate unions as well.

The Taft-Hartley Act, however, regulated unions as well as employers. But nowhere in its language or its legislative history is there the slightest indication that Congress intended to regulate unions in relation to their own ordinary employees under the 8 (a) sections of the Act. Congress specified the proscribed union unfair labor practices in Section 8 (b) of the Act, which are pertinent in relation to employees of other employers rather than in the context of their own ordinary employer-employee relations. Thus, for example, in Section 8 (b) (2), unions are prohibited from "causing or attempting to cause" other employers to discriminate against their employees, but unions are not

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forbidden to discriminate against their own employees. The specification in Section 8 (b) of what are unfair labor practices by unions necessarily excludes others not mentioned, under well established principles of statutory construction.

Contrary to the suggestion of the dissenters, I indulge in no assumptions—tacit or otherwise—as to the need or lack of need of Congressional regulation of relations

¹⁰ See, e. g., Millis and Montgomery, *Organized Labor*, 1945, pp. 344-352, for a discussion of labor unions' experience in the banking business.

between unions and their ordinary employees. That is a matter for Congress to consider and decide. If Congress desires this Board to regulate the relations between unions and their own employees in their normal collective bargaining functions, it can amend the Act to so provide. Until such time, I shall continue in the belief that under the Act as presently drafted they remain free from such regulation.

Dated, Washington, D. C., Aug. 25, 1955.

ABE MURDOCK,

Member

NATIONAL LABOR RELATIONS BOARD

1795

PHILIP RAY RODGERS AND BOYD LEEDOM, MEMBERS, dissenting:

We dissent from the decision of the majority of the Board in this proceeding not to assert jurisdiction over the Respondents. We believe such decision achieves a paradoxical and unwarranted result in permitting labor unions to deny to their own employees the very rights and privileges which unions have so vigorously advocated and won for the employees of others. Labor unions are now free to flout the very statutory provisions which they ardently championed, and which have been hailed as the Magna Charta of labor.

Most of the charges of employer infractions of the Taft-Hartley Act have in the past been filed by labor unions, and one of the most militant unions in this respect has been the Respondent International and its affiliates. They have been commendably alert to detect violations of the Act by employers, and by the very nature of things, they are the ones who usually call for the services of this Board and the Labor Management Relations Act by filing appropriate charges of unfair labor practices.

Employers who have been required to defend themselves before the Board against union charges of discrimination against employees, refusal to bargain with employee representatives, and other forms of interference with employee organizational rights, will no doubt be astonished to learn from the instant decision that the unions which filed the charges against them are free to engage in the very conduct for which they (the employers) are required to answer.

We turn now from these general considerations to the particular cases before us. As the complaints in the instant charges are being dismissed by the majority on jurisdictional grounds, there is no need for us to pass upon the merits of these complaints. It may not be inappropriate to observe, however, that the Respondents herein (all of them labor organizations or agencies controlled by such organizations) are each charged with engaging in one or more of the five unfair labor practices enumerated in Section 8 (a)

1796

of the Act and that the Trial Examiner, after a lengthy and careful analysis of the evidence, sustained virtually all of the charges. Thus, he found that the International, Security Plan Office, and Locals 206 and 223 had violated Section 8 (a) (1) and (2) of the Act by their solicitation of employees of the 3 Respondents last named to join Local 223 rather than the Charging Union, that Security Plan Office, Building Association, and Joint Council had violated Section 8 (a) (1), (2), (3), and (4) of the Act by discharging, altogether, 3 employees and one supervisor (all of whom were adherents of the Charging Union in anticipation of their giving testimony at a Board hearing in support of the charges in Case No. 36-CA-410 against Security Plan Office and Local 206; that Local 206 had violated Section 8 (a) (1) and (3) of the Act by discharging an employee because she had refused to cross a picket line established by the Charging Union; that Security Plan Office had violated

Section 8 (a) (5) of the Act by refusing to bargain with the Charging Union, although it represented a majority of the employees of Security Plan Office; and that the International and its representative, Sweeney, violated Section 8 (a) (1) of the Act by seeking to influence the testimony of a witness at a Board hearing.

These violations found by the Trial Examiner were not mere technical or trivial infringements upon the rights of the employees involved, but were, if the Trial Examiner is correct, part and parcel of a purge of all employees of the Respondents who persisted in promoting the cause of the Charging Union as against Local 223, the organization favored by the other Respondents; and, if we accept the Trial Examiner's findings, certain of the Respondents by their conduct showed not only a disregard for the guarantees of the Act but also for the Board's judicial processes by discharging employees because they had been subpoenaed by the General Counsel to testify against 2 of the Respondents and, in the case of Respondent Sweeney, by urging a prospective witness for the General Counsel either to falsify her testimony or "take a trip."

Thus, the violations charged to the Respondents not only run the entire gamut of employer unfair labor practices,

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but also include at least one novel variation." We do not say that the Board's jurisdiction should depend on the seriousness of the offenses alleged. We wish to point out only that the nature of the charges and of the Trial Examiner's findings in this case, and the records of other proceedings against union-employers in the Board's files cast grave doubt on the validity of any tacit assumption by the

"No case has been found in the entire 20 years of the Board's experience where a respondent has visited reprisals upon Board witnesses even before they had testified.

majority that employees of labor unions do not need the protection of the Act; and such charges, findings and records tend to vindicate the fears expressed by witnesses at the hearings before the Senate Labor Committee in 1934 on the original Wagner Bill (S. 2926), which proposed to exclude all employees of labor unions from the protection of the Act.¹² Those witnesses opposed such exclusion on various grounds, including the naivete of any view that unions could be "trusted to deal fairly with those who work for them."¹³ It was presumably because of these considerations and because of the patent danger that in hiring their own employees unions might discriminate against non-members, that the Senate Labor Committee, in reporting the 1934 Bill, proposed to modify the blanket exclusion of unions from the definition of "employer" by inserting the present parenthetical language which includes labor unions as an employer "when acting as an employer."¹⁴

In explaining the reasons for this change, the 1934 Senate Labor Committee Report stated:

¹² While, as stated in the majority opinion, the instant proceeding is the first case actually to be decided by the Board in which a labor organization has been charged with unfair labor practices against its own employees, a partial search of the Board's files shows that since 1947 charges have been filed against unions as employers in 28 cases, not including the instant proceeding. Fifteen of these cases contained a charge of discrimination against one or more employees in violation of Section 8 (a) (3) of the Act. One case charged a violation of Section 8 (a) (4) of the Act. In 13 cases unions were charged, as employers, with refusing to bargain with other unions, in violation of Section 8 (a) (5) of the Act. Independent violations of Section 8 (a) (1) were alleged in 2 cases. Of these 28 cases, one is still pending before the General Counsel on appeal from a Regional Director's dismissal on the merits of the charge filed, one was disposed of by a formal settlement agreement, 15 were withdrawn by the charging party, and 11 were dismissed as lacking merit.

¹³ See Board Compilation of Legislative History of NLRA, 1935, pp. 720, 940, 1192.

¹⁴ Thus modified, Section 2 (2) of the 1934 Bill read, as does the present Act: "The term 'employer' . . . shall not include . . . any labor organization (other than when acting as an employer) . . ."

The reason for stating that 'employer' excludes 'any labor organization, other than when acting as an employer' is this: In one sense every labor organization is an employer, it hires clerks, secretaries and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides. But in relation to other employees, it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization.¹⁵

As the 1934 bill was not acted upon by Congress, a new bill (S. 1958) was introduced by Senator Wagner in 1935, which again contained a blanket exclusion of labor unions from the definition of "employer," omitting the parenthetical language proposed by the Senate Labor Committee in 1934. That language was, however, restored by the Committee in the new Bill as reported by it, the reasons given for such restoration being substantially the same as those cited in the 1934 Report quoted above;¹⁶ and that language was retained without change in the Bill as finally enacted and in the 1947 Taft-Hartley Amendments.

It is clear from the foregoing that Congress contemplated that, by including labor organizations in the definition of employer, it was extending the protection of the Act not only to persons employed in "commercial" activities of labor organizations but also to the clerks and secretaries, hired to assist in carrying out the conventional, non-commercial functions of a labor union. The instant decision nullifies that purpose of Congress by holding that it would not effectuate the policies of the Act to assert jurisdiction over non-commercial activities of labor unions, thus denying the protection of the Act to the very "clerks" and "secretaries" referred to in the Senate Committee Report.

¹⁵ Board Compilation of Legislative History of NLRA, 1935, p. 1102.

¹⁶ Id., p. 2305.

It is true that the Board has a broad discretion in determining whether the assertion of its jurisdiction in a particular case will effectuate the Act's policies. However, in exercising that discretion in the past, the Board has shown a commendable respect for the views of Congress, as gleaned from legislative history, with regard to the proper bounds of Board action. Thus, in *Hotel Association of St. Louis*,¹⁷ in declining to assert jurisdiction over the

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hotel industry, the Board relied upon a comment by Senator Taft made on the Senate floor 2 years after the enactment of the present statute and upon other "post-legislation" history. Yet, here, the majority would give no effect to the statement quoted above from the Senate Committee Report, which antedated Congressional action on the provision under consideration, and which manifests an intent that the Board make its processes available to employees engaged in non-commercial activities of labor unions.

We do not believe that the force of this legislative history is impaired by the language quoted by the majority from the Conference Report on the Taft-Hartley Act relating to the exclusion of nonprofit organizations from the definition of "employer". There is no indication in that Report that, in approving the Board's policy of declining to assert jurisdiction over noncommercial activities of nonprofit organizations, the conferees had in mind labor unions. The Board had not at that time had occasion to resolve the question of its jurisdiction over labor unions. (In the only subsequent case other than the instant proceeding in which that question arose, a representation case, the Board asserted jurisdiction and directed an election in a unit of employees performing conventional labor union functions.¹⁸

¹⁷ 92 NLRB 1388.

¹⁸ *Air Line Pilots Association*, 97 NLRB 929. Included in the unit were contract negotiators and organizers.

We fail to find that this decision evoked any Congressional strictures.)

Moreover, the language of the Conference Report quoted by the majority should be read in context with the rest of the paragraph in which it appears and the legislative provisions to which it refers. Section 2 (2) of the Taft-Hartley Bill passed by the House (H. R. 3020) amended Section 2 (2) of the Wagner Act by inserting immediately after the language including in the definition of "employer" labor organizations "when acting as an employer", language excluding from that definition "any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which

1800

inures to the benefit of any private shareholder or individual." As passed by the Senate, however, this Bill, in lieu of the foregoing broad exclusion of nonprofit organizations devoted to religious or charitable purposes, etc., excluded only any nonprofit corporations and associations operating hospitals. The conferees adopted this more limited exclusion favored by the Senate, and it was in explanation of this action that the statement was made which is quoted in part by the majority from the Conference Report. The entire statement, insofar as here relevant, is as follows:

The conference agreement . . . follows the Senate amendment in the matter of exclusion of nonprofit corporations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their

(1801)

employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act."¹⁰ (emphasis added).

It seems clear from the foregoing that the antecedent of "such organizations" in the excerpt quoted is not non-profit organizations generally (including unions) as the majority opinion implies, but only the specific categories of nonprofit organizations enumerated in the House Bill. That these categories were not deemed to include labor unions follows from the fact that the exclusion of non-profit organizations in the House Bill was immediately preceded by the familiar language including labor unions as employers "when acting as an employer." It is unrealistic, in any case, to believe that a Congress which, animated by a desire to make the Wagner Act a two-way street, adopted an elaborate code of restrictions upon labor unions, could have intended to strike down in whole or in part the only limitations in the Wagner Act upon labor union conduct. Such a view not only takes language out of context but ignores the mood of Congress in passing the Taft-Hartley Act:

We would, therefore, affirm the Trial Examiner and assert jurisdiction over all the Respondents herein.

1801

In any case, even if one accepts the view of the majority that the Board should not assert jurisdiction over the non-commercial activities of labor unions, it is difficult to understand how the operations of Security Plan Office can be classified as "noncommercial." As found by the Trial Examiner, this office, in Portland, Oregon, is a separate legal entity from the other Respondents. It receives contributions from about 2,000 employers, parties to collective bargaining agreements with Teamster locals. In accordance with the provisions of these agreements, the Security Plan

¹⁰ House Report No. 510, 80th Cong. 1st Sess., p. 32.

Office uses these contributions, currently about \$2,000,000 per annum, to defray the cost of health and welfare insurance policies purchased from a life insurance company in Los Angeles, California. The Security Plan Office, itself, processes claims under these policies and acts as disbursing agent for the insurance company in paying such claims, for these services, that office receives an allowance from the insurance company equal to 4 percent of total premiums.

It is apparent from the foregoing that the Security Plan Office performs functions ordinarily associated with insurance brokers and underwriters. Under the Wagner Act, the Board, with the approval of the Supreme Court,²⁰ asserted jurisdiction over a fraternal organization relying on the fact that it provided death, disability, and accident, benefits (on a nonprofit basis); to its members and their beneficiaries. More recently, the Board in an unpublished decision, asserted jurisdiction over insurance operations of the Knights of Columbus.²¹ Accordingly, even if we equate labor unions and their agencies with other nonprofit organizations for jurisdictional purposes, as the majority does, it is not clear why their operations in the insurance field should be treated as non-commercial while similar operations of other nonprofit organizations for the benefit of their members are regarded as commercial. We believe that even under the rule announced by the majority limiting the Board's exercise of jurisdiction to commercial operations of unions, jurisdiction should be asserted over Security Plan Office.

Dated, Washington, D. C., August 25, 1955

PHILIP RAY RODGERS

Member

BOYD LEEDOM

Member

National Labor Relations Board

²⁰ *Polish National Alliance v. N.L.R.B.*, 322 U.S. 643.

²¹ *Knights of Columbus*, 1-RC-3913 (1955).

(1802)

1802

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SEE ATTACHED SHEETS

AFFIDAVIT OF SERVICE OF DECISION AND
ORDER (IR attached)

DATE OF MAILING August 25, 1955

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esquire
618 Failing Building
Portland 4, Oregon

69448

PLAIN MAIL TO:

Oregon Teamsters' Security Plan Office and
William C. Earhart, administrator thereof,
and Teamsters Security Administration
Fund and Warehousemen Local No. 206,
a/w International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers
of America
1020 N. W. Third Avenue
Portland 12, Oregon

Anderson, Franklin & Landye
Att: James Landye, Esquire
333 American Bank Building
Portland, Oregon

69449

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
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1020 N. W. Third Avenue
Portland 12, Oregon

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New World Life Building
Seattle 4, Washington

69450

Office Employees International Union,
Local #11
Att: James N. Beyer
1008 S. W. Sixth Avenue
Portland, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esquire
1130 Southwest 3rd
Portland, Oregon

69451

International Brotherhood of Teamsters,
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1020 N. W. Third Avenue
Portland 12, Oregon

NLRB—36th Subregion
Room 326, U. S. Court House
620 S. W. Main Street
Portland 4, Oregon

69452

Warehousemen Local No. 206,
a/w IBTCWHA, AFL
1020 N. W. Third Avenue
Portland 12, Oregon

NLRB—19th Region
407 U. S. Court House
5th Avenue & Spring
Seattle 4, Washington

69453

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America; AFL, and Joint Council of
Drivers No. 37
1020 N. W. Third Avenue
Portland 12, Oregon

(over)

/s/ JAMES ARMISTEAD

Subscribed and sworn to before me this day of
....., 1955.

DANA I. WILSON

Designated Agent

National Labor Relations Board

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America, AFL, and its Agent, John J.
Sweeney and Oregon Teamsters Security
Plan Office and William C. Earhart, Ad-
ministrator and of Teamsters Security
Administration Fund
1020 N. E. Third Avenue
Portland 12, Oregon

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, AFL
100 Indiana Avenue, N. W.
Washington, D. C.

1803

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.
and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS
and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and

Case No. 36-CA-647

(1804)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY,
and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
and WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

1804

RETURN RECEIPT

*Received from the Postmaster the Registered or Insured
Article, the number of which appears on the face of this
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2 G. Roper
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RETURN RECEIPT

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2 N. Mans
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Date of delivery.....8-29, 1955..

RETURN RECEIPT

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1 NLRB
(Signature or name of addressee)

2 M. Klippel
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Aug 29, 1955..

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,896, October Term, 1955

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*
Before: Prettyman, Circuit Judge, in Chambers.

ORDER

Counsel for the parties to this case having appeared before me pursuant to Rule 38(k) of this Court and counsel having submitted to me a prehearing stipulation, and counsel having reported to me that they are in substantial agreement as to the portions of the record to be printed and that the provisions of paragraphs 2 and 4 of the stipulation with regard to the printing of the record are merely precautionary, and having considered said stipulation, I approve the stipulation of the parties and order that said stipulation be filed.

It is FURTHER ORDERED that the parties proceed according to the prehearing stipulation and that this order and the prehearing stipulation be printed in the joint appendix.

Dated: November 15, 1955

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

OFFICE EMPLOYEES INTERNATIONAL UNION, Local No. 11,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 12,896

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, hereby stipulate and agree as follows with respect to the issues and the procedure and dates for the filing of the briefs and joint appendix to briefs herein:

I.

THE ISSUE

This case is before the Court upon the petition of Office Employees International Union, Local No. 11, the charging

union before the National Labor Relations Board, to review the dismissal by the Board on jurisdictional grounds of a complaint alleging that Oregon Teamsters' Security Plan Office and various other divisions, locals or agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Teamsters organizations, had violated Section 8(a)(1), (2), (3), (4) and (5) of the Act.

The issue presented is whether the Board properly refused to assert jurisdiction over the Teamsters organizations.

II.

PROCEDURE WITH RESPECT TO FILING OF BRIEFS, DESIGNATION OF RECORD AND PRINTING OF JOINT APPENDIX

For the purpose of facilitating the work of the Court and the parties, the parties agree:

1. That petitioner will file its printed brief on or before December 5, 1955, and the Board will file its printed brief on or before January 3, 1956. Petitioner may file a reply brief on or before January 18, 1956. Should adherence to the aforesaid dates become impractical, the parties will, subject to the approval of the Court, agree upon a revised set of dates.

2. With respect to designations of portions of the record which the parties desire to have included in the joint appendix, it is agreed that prior to the filing of their respective briefs, each party will furnish the other a designation of parts of the record upon which he intends to rely.

3. In their respective briefs the parties will not refer to the page numbers of the joint appendix (which will be centered at the bottom of the page but instead will refer

to those numbers which are centered in bold face type in the body of the appendix and which also appear in brackets in the upper outside corner of each page. The bold face numbers correspond with the page numbers of the typewritten transcript of the testimony, and the pages of the Intermediate Report, Exceptions, and Decision and Order which have been renumbered to correspond with the pages of the record certified to the Court. References to exhibits of the General Counsel and the Teamsters will be designated "G.C. Ex." and "R. Ex." respectively.

4. It is further agreed and stipulated that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record herein which has not been printed to the same extent and effect as if such portions of the transcript had been printed, it being understood that any portions of the record thus referred to will be printed in a supplemental point appendix if the Court directs the same to be printed.

JOSEPH E. FINLEY

Joseph E. Finley

Attorney for Petitioner

Dated November 10, 1955.

MARCEL MALLET-PREVOST

Marcel Mallet-Prevost

Assistant General Counsel

National Labor Relations Board

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11,

Petitioner;

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION TO SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This is a petition to set aside an order of the National Labor Relations Board pursuant to Sec. 10 (f) of the National Relations Act, 29 U.S.C. Sec. 160 (f), such order having been made in a case before the National Labor Relations Board known as Oregon Teamsters' Security Plan Office, et al, Case No. 36-CA-410, 36-CA-637, 638, 639, 647, and 648, dated August 25, 1955, and reported as 113 NLRB No. 111.

Charges were filed under Sec. 10 (b) of the National Labor Relations Act by Petitioner against various organizations, hereinafter designated, and a complaint was issued in Case No. 36-CA-410 by the General Counsel of the National Labor Relations Board on June 25, 1954. Thereafter, on August 13, 1954, and August 17, 1954, complaints were issued by the General Counsel against other respondent organizations. The parties respondent, against whom charges were filed by Petitioner herein, in this NLRB proceeding were: (1) Oregon Teamsters' Security Plan Office and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund; and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, No. 36-CA-410; (2) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Teamsters Building Association, Inc., No. 36-CA-637; (3) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, No. 36-CA-638; (4) Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, No. 36-CA-639; (5) International Brotherhood of Teamsters, Chauffeurs.

Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, No. 36-CA-647; (6) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent, John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, No. 36-CA-648.

In its decision and order in these proceedings, reported at 113 NLRB No. 111, the National Labor Relations Board ruled, by a 3-to-2 majority, that it would not assert jurisdiction over these respondents, and ordered the complaints dismissed.

The National Labor Relations Board is located in the District of Columbia and this petition is being brought in this Court pursuant to Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160 (f).

Relief is sought on the grounds that the order of the National Labor Relations Board dismissing the complaints on the ground that it would not assert jurisdiction over the NLRB respondents in the proceeding before that agency, is erroneous and contrary to law, and in specific contravention of the terms of Sec. 2(2) of the National Labor Relations Act, 29 U.S.C. Sec. 152(2), and other sections of that statute.

Petitioner herein, having filed the charges against the various respondents in the NLRB proceeding, and having been listed by the Board as one of the parties in that proceeding, is an "aggrieved person" within the meaning of Sec. 10 (f) of the National Labor Relations Act, and thereby entitled to bring this petition.

WHEREFORE, Petitioner respectfully prays that this Court set aside the aforesaid order of the National Labor Relations Board and remand the cause to the National Labor

Relations Board directing that agency to assume its statutory jurisdiction over the aforesaid NLRB respondents and decide the issues in that cause in accordance therewith.

Respectfully submitted

JOSEPH E. FINLEY

Joseph E. Finley

Attorney for OFFICE EMPLOYES INTERNATIONAL

UNION, LOCAL No. 11, Petitioner

810—18th St. N. W.

Washington, D. C.

ST 3-2677

[fol. 260] United States Court of Appeals for the District of Columbia Circuit. Filed February 23, 1956.

Received. Sep. 14, 1956. Office of the Clerk Supreme Court, U. S.

[fol. 261] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

No. 12896

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

Mr. Joseph E. Finley for petitioner.

Miss Fannie M. Byols, Attorney, National Labor Relations Board, with whom *Mr. Marcel Mallet-Prevost*, Assistant General Counsel, National Labor Relations Board, was on the brief, for respondent.

Messrs. Clifford D. O'Brien and *Richard Frank* filed a brief as *amici curiae*, urging affirmance.

OPINION—June 21, 1956

Before PRETTYMAN, BAZELON and DANAHER, Circuit Judges.

PRETTYMAN, *Circuit Judge*: Petitioner, as its name implies, is a labor union primarily representing office and clerical employees. It filed with the Labor Board charges against a group of other organizations, mostly unions, known in this litigation collectively as the Teamsters. It alleged many unfair labor practices in respect to certain of the Teamsters' office and clerical employees. The dis-

senting Board members observed that "the violations to the Respondents [the Teamsters] not only run the entire [fol. 262]gamut of employer unfair labor practices, but also include at least one novel variation." The Board itself said: "This is the first proceeding to be decided by the Board in its 20-year history in which labor organizations have been charged with committing unfair labor practices as employers in dealing with their own employees." An Examiner, after hearing, found most of the charges sustained. The Board did not disturb those findings or conclusions but found that the policies of the Act would not be effectuated by asserting jurisdiction in the proceeding, and so it dismissed the complaints in their entirety.

The Board agreed, with the Examiner's interpretation of Section 2(2) of the Act,¹ that labor organizations are employers with respect to their own employees. The Board then said it must determine in respect to these respondents (the Teamsters), as in respect to all other employers, whether they are engaged in commerce or activities affecting commerce and, if so, whether the policies of the Act would be effectuated by asserting jurisdiction over them.

Proceeding with the inquiry the Board first found that these unions are non-profit organizations. It then applied to them the standards it says it regularly applies to non-profit organizations, citing cases to illustrate the application to universities, orchestras and such. It says it asserts jurisdiction over such organizations "only in exceptional circumstances and in connection with purely commercial activities". It found the Teamsters' activities to be, "obviously, not substantial engagement in a commercial venture" within the meaning of its rules. The foregoing was enough to dispose of the cases.

[fol. 263] Cast in the frame indicated by the foregoing we think the decision fell within the broad discretion which seems to be established as applicable to the Board's actions

¹ 61 STAT. 137 (1947), 29 U.S.C.A. § 152(2), providing in pertinent part: "The term 'employer' . . . shall not include . . . any labor organization (other than when acting as an employer) . . ."

in entertaining complaints. For example, in *Labor Board v. Denver Bldg. Council*,² the Supreme Court said:

“Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case.”

Other cases are to the same effect.³

The Board did not hold that labor organizations are not employers in respect to their employees. It held that they are. It held that Section 2(2) of the Act placed labor organizations in precisely the same status under the Act as are all other employers. It then applied to these respondent employers the rules it has already established for other employers. To be sure, this is not a case in which the Board had merely to apply to this union a rule theretofore established by it relative to unions. In this case, the first involving unfair labor practice charges against a union, the Board fashioned a rule out of the material and criteria theretofore established by it for use in a certain category. It found the criteria customarily applied to that category applicable to a union. In essence it treated the union as an employer.

[fol. 264] It is argued by petitioner that by inserting the specific provision in Section 2(2) Congress removed from the area of Board discretion the jurisdiction of the Board in respect to labor organizations. We think the provision cannot be given so broad an effect. It put labor organi-

² 341 U.S. 675, 684, 95 L.Ed. 1284, 71 S.Ct. 943 (1951).

³ *Labor Board v. I. & M. Electric Co.*, 318 U.S. 9, 18, 87 L.Ed. 579, 63 S.Ct. 394 (1943); *National Labor Relations Bd. v. Newark Morning L. Co.*, 120 F.2d 262, 268 (3d Cir. 1941), *cert. denied*, 314 U.S. 693, 86 L.Ed. 554, 62 S.Ct. 363 (1941); *Haleston Drug Stores v. National Labor Relations Bd.*, 187 F.2d 418, 420-422 (9th Cir. 1951); *Local Union No. 12 v. National Labor Relations Board*, 189 F.2d 1, 3-5 (7th Cir. 1951).

zations in the category of employers as to their own employees, but it did no more than that.

The conclusions of the Board with reference to the non-profit character of these labor organizations, the reasoning with which it supports its criteria for jurisdiction, and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious. Our function in these areas of administrative discretion goes no further.

In the course of its opinion the Board expressly overruled a prior case⁴ in which it had assumed jurisdiction in a representation matter involving a union and its employees. But the Board has power to change its mind, just as a court does, and both of two conflicting views are often rational, neither arbitrary nor capricious.

The Board in its "Decision and Order" went on to say that, even if the criteria applicable to non-profit organizations generally were not applied to the Teamsters, the Board would not assert jurisdiction, because no other existing jurisdictional criteria apply. The Board said:

"We do not believe that labor organizations, which, when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme, should be made subject to any of the standards originated for business organizations. Accordingly, we would, at least, require for labor organizations as employers the establishment of a jurisdictional standard contemplating the singular characteristics of their institutional operations. In presenting this case for Board determination the General Counsel failed to suggest any such standard."

[fol. 265] The Board did not rest its conclusions and order on this latter part of its opinion and did not discuss the matter in its brief here. We need not treat of it but are constrained to comment that under the statutory scheme of organization the General Counsel to the Board does not seem to us to have a responsibility for the formulation

⁴ Air Line Pilots Association, 97 N.L.R.B. 929 (1951).

of jurisdictional criteria for the Board itself. He has responsibility for filing complaints. In so far as the Board itself has a discretion in respect to jurisdiction over complaints once filed, it must take the responsibility for its own standards.

The order of the Board will be

Affirmed.

BAZELON, *Circuit Judge*, dissenting:

I think § 2(2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees. Hence I think the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction.

[fols. 266-267] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

No. 12,896

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

Before Prettyman, Bazelon and Danaher, Circuit Judges
JUDGMENT—June 21, 1956

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is hereby ordered and adjudged by this Court that the order of the said National

Labor Relations Board on review in this case be, and the same is hereby, affirmed.

Dated: June 21, 1956.

Per curiam.

Separate dissenting opinion by Circuit Judge Bazelon.

[fol. 268] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 269] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 422

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED

SEP 14 1956

JOHN T. FEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. **422**

OFFICE EMPLOYES INTERNATIONAL UNION,
LOCAL No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

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No.
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OFFICE EMPLOYES INTERNATIONAL UNION,
LOCAL No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

—
**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

—
OPINIONS BELOW

The opinion of the National Labor Relations Board is reported at 113 NLRB No. 111 (J.A. 1786). The opinion of the Court of Appeals for the District of Columbia Circuit is reported at F. 2d , and is set out in Appendix A, *infra*.

JURISDICTION

The judgment of the Court of Appeals was entered on June 21, 1956 (Appendix A, *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the refusal of the National Labor Relations Board to assert jurisdiction over unfair labor practices of Teamsters Unions as employers against their own employees was contrary to the expressed will of Congress and thus arbitrary and capricious?

2. Whether the National Labor Relations Board acted arbitrarily and capriciously in placing labor unions as employers in a category with religious, educational, and scientific organizations for jurisdictional purposes?

THE STATUTE INVOLVED

The single statutory provision about which this controversy revolves is Sec. 2 (2) of the National Labor Relations Act, as amended, 29 U. S. C. Sec. 152 (2), set forth in full as follows:

“(2) The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal reserve bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.”

STATEMENT OF THE CASE

The primary issue is whether labor unions are free to commit unfair labor practices against the employees who work for them because the National Labor Rela-

tions Board has declined to exercise its jurisdiction over these labor union employers. The labor union employers involved are the International Brotherhood of Teamsters and several of its affiliates, comprising one of America's largest and most powerful labor unions. The petitioner is a local union of the Office Employees International Union, a member of the American Federation of Labor-Congress of Industrial Organizations just as are the Teamsters. The Office Employees union was the collective bargaining agent for the employees who worked for the Teamsters unions. This is not merely another case seeking Supreme Court review of the limits of discretion allowable to the National Labor Relations Board in establishing its jurisdiction over labor relations cases.¹ This case involves a specific statutory reference to labor unions as employers and a policy established by Congress through the language of the statute and its legislative history.

Despite the language of Sec. 2 (2) of the National Labor Relations Act, as amended,² which includes labor organizations within the definition of employer "when acting as an employer", the NLRB held that it would not effectuate the policies of the Act to assert jurisdiction over unfair labor practices of unions when acting as employers. The comments of dissenting National Labor Relations Board Members Rodgers and Leedom eloquently illustrate the importance of the primary issue:³

¹ Cf. *Optical Workers Union v. NLRB*, 229 F. 2d 170 (CA 5, 1955), certiorari denied, — U.S. —, 24 L. W. 3328 (Oct. Term, 1955).

² 29 U. S. C. Sec. 152 (2).

³ Joint Appendix 1795, hereinafter referred to as J. A.

"We believe such decision achieves a paradoxical and unwarranted result in permitting labor unions to deny to their own employees the very rights and privileges which unions have so vigorously advocated and won for employees of others. Labor unions are now free to flout the very statutory provisions which they ardently championed, and which have been hailed as the Magna Charta of labor."

Events culminating in this case began in 1953, when several Teamsters Unions and affiliates in Portland, Oregon, undertook a course of treatment of their own office and clerical employees that caused unfair labor practice charges to be filed by Petitioner with the National Labor Relations Board against these labor unions as employers. Complaints were thereafter issued, and extensive hearings were held before a Trial Examiner.

The Teamsters Unions were found guilty by the Examiner of violations of every employer unfair labor practice section in the law.⁴ The scope of these violations is again best illustrated by the description of dissenting NLRB Members Rodgers and Leedom, who said:⁵

"These violations found by the Trial Examiner were not mere technical or trivial infringements upon the rights of the employees involved, but

⁴ Employer unfair labor practices in the National Labor Relations Act, 29 U. S. C. Sec. 151 et seq., are contained in Sec. 8 (a), subsections (1), (2), (3), (4), and (5). The Teamster respondents were found by the Trial Examiner to have violated every one of these subsections, entailing all the employer unfair labor practices possible.

⁵ J. A. 1796.

were, if the Trial Examiner is correct, part and parcel of a purge of all employees of the Respondents who persisted in promoting the cause of the Charging Union as against Local 223, the organization favored by the other Respondents; and, if we accept the Trial Examiner's findings, certain of the Respondents by their conduct showed not only a disregard for the guarantees of the Act but also the Board's judicial processes by discharging employees because they had been subpoenaed by the General Counsel to testify against 2 of the Respondents and, in the case of Respondent Sweeney, by urging a prospective witness for the General Counsel either to falsify her testimony or 'take a trip.'"

Not only did these Teamsters unions urge witnesses to falsify testimony or "take a trip," but, according to Members Rodgers and Leedom,* were found to have committed one unfair labor practice never before encountered by the Board in its 20-year history of dealing with unfair treatment of employees. These respondent unions, in dealing with their own workers, took reprisals against employees who had been subpoenaed as Board witnesses even before these employees had testified.

Concerning jurisdiction over these unions as employers, the Trial Examiner was confronted with the only previous NLRB decision on this question, *Air Line Pilots Association*, 97 NLRB 929. There, in a representation proceeding, the Board had found that Congress intended that labor unions be treated like any other employer with regard to their own employees, that the union employer involved was multi-state in

* J. A. 1797.

character, and that jurisdiction would therefore be asserted. Following this precedent, the Examiner found the Teamsters unions well within the meaning of the term "multi-state enterprise", and held that jurisdiction should be taken over these union employers.⁷

Exceptions to the Trial Examiner's Intermediate Report were filed with the NLRB, oral argument was heard limited to the question of the exercise of the Board's jurisdiction, and on August 25, 1955, the Board handed down its decision, refusing to assert jurisdiction over these unions as employers.⁸ Accordingly, the complaints were dismissed.

Chairman Farmer and Member Peterson, writing the opinion of the Board, said the statutory inclusion of unions as employers when acting as employers left the Board free to determine if their activities affected commerce, and if so, whether Board jurisdiction over their operations would effectuate the policies of the Act.⁹ The Teamsters unions, said the Board majority, were nonprofit organizations. The Board did not assert jurisdiction over nonprofit organizations except "in connection with purely commercial activities of such organizations."¹⁰ Therefore, the Board would not take

⁷ J. A. 1665. The Examiner found that the International Brotherhood of Teamsters was a national labor organization with 872 chartered local unions and 1,204,477 members, and in the year ending December 31, 1953, had a total revenue of \$6,587,327, of which \$5,755,232 represented remittances to its offices in Washington, D. C. He further found that the International and its constituent locals constituted one integrated, closely-knit national organization.

⁸ J. A. 1790.

⁹ J. A. 1790.

jurisdiction over these unfair labor practices of union employers.¹⁰

Member Abe Murdock, in a concurring opinion, said that the legislative history of Sec. 2 (2) of the Act indicated to him that Congress did not intend that the Board should take jurisdiction over union employers except when unions engaged in commercial business.¹¹ Needless to say, Member Murdock's concurring opinion was apparently so ill-considered by the Board's General Counsel that no reliance was placed upon it in argument before the Court of Appeals, and no consideration of it was given by the Court below.

Members Rodgers and Leedom dissented from the Board's finding, stating that the statutory language and the comprehensive legislative history accompanying Sec. 2 (2) indicated a purpose of Congress to afford protection to employees of labor unions. Therefore, it was wrongful for the Board to ignore that purpose and permit union employers to escape the responsibilities which the law had imposed upon them.

The Court of Appeals, in a 2-to-1 decision, upheld the Board. Judge Prettyman, in an opinion joined in by Judge Danaher, held that the Board's placing

¹⁰ There was a strong hint in the Board's ruling that it would therefore take jurisdiction over unions as employers when they engaged in commercial businesses, citing *Bausch & Lomb Optical Co.*, 108 NLRB 1555, as such an instance. But in that case, the union itself did not engage in business, nor does a union hardly ever, if ever. There a corporation whose stockholders were mostly union members engaged in an optical business competing with an optical company which apparently employed these same stockholder-union members.

¹¹ J. A. 1792. As Petitioner's argument will point out, the legislative history is almost directly contrary to the strange finding of Member Murdock.

the respondent unions in a jurisdictional category with other nonprofit employers was rational and not arbitrary. As for the Sec. 2 (2) argument, the majority concluded that the statutory provision "put labor organizations in the category of employers as to their own employees, but it did no more than that." (Appendix A, p. 4a).

Judge Bazelon dissented. "I think Sec. 2 (2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees." (Appendix A, p. 5a).

This petition is filed seeking review of the erroneous decision of the Court of Appeals.

REASONS FOR GRANTING THE WRIT

I. Double Standard Labor Law: Are Labor Union Employers Free to Commit Unfair Labor Practices When Business Employers Must Obey the Law?

Fairness and justice in administration of our labor laws make this case particularly appropriate for Supreme Court review. The National Labor Relations Board has ruled that, even though Sec. 2 (2) of the Act covers labor unions as employers when they deal with their own employees, it will not take jurisdiction over unions as employers, and accordingly, any labor union employer is free to fire, discriminate against, or interfere with employees for any reason whatever. Commerical employers, however, are held to a standard of fair treatment of their employees, under requirements of the law. The Court of Appeals has declined to disturb this Board ruling as within an allowable area of administrative discretion.

This "paradoxical and unwarranted result"¹² makes this case one of great public concern. It is indeed difficult to rationalize a result where labor unions, even though specifically referred to in a statute as being within the law when they act as employers, are left free to commit unfair labor practices against their own employees. An American public, brought up on traditions of fair play and equal treatment for all, has the right to place this case in the forefront of matters of public importance.

It is respectfully submitted that no administrative decision of our time has been as widely reported in the American press as was the National Labor Relations Board decision of August 25, 1955.¹³ According to clippings furnished Petitioner by a newspaper clipping service, Press Intelligence, Inc., of Washington, D. C., some one hundred and four (104) American daily newspapers reported the NLRB decision in their editions. At least twenty (20) of these newspapers considered the ruling of such fundamental importance that they reported it on their front page.¹⁴

¹² Dissenting NLRB opinion of Members Rodgers and Leedom, J. A. 1795.

¹³ Petitioner, of course, has no figures to substantiate such a belief, but considers the nationwide press coverage so extensive that it would be unusual, indeed, if any other ruling of an administrative agency could have been as widely covered.

¹⁴ These leading newspapers considered the importance of this decision as worthy of front page coverage:

New York Times, Baltimore Sun, Boston Herald, Cleveland Plain Dealer, Louisville Courier-Journal, Portland (Me.) Press-Herald Telegram, Phoenix (Ariz.) Republic, Knoxville Journal, Portland (Ore.) Oregonian, Des Moines Register, Baltimore Evening Sun, Madison (Wis.) State Journal, Beaumont (Tex.) Enterprise, Augusta (Ga.) Chronicle, St. Joseph (Mo.) Gazette, Fort Wayne

Editorial comment, another indicia of the importance of a news event, was widespread. Clippings in Petitioner's file, which are not submitted to be exhaustive, reveal that at least 34 newspapers carried editorials on the NLRB ruling. Not one single editorial is found which approves the NLRB decision.¹⁵

Representative editorials illustrate the public reaction that was aroused by the NLRB ruling. The Salt Lake City Deseret News and Telegram of Aug. 30, 1955, titled its editorial, "Double Standard Labor Relations." The Milwaukee Journal of Aug. 30, 1955, headlined its comment, "A Fantastic Labor Decision." The Youngstown (O.) Vindicator of Aug. 31, 1955, said, "A Mistaken Ruling." The New York Times of Aug. 31, 1955, in a careful and analytical editorial headed, "When Unions Are Unionized," was extremely critical of the Board decision.

Not only does the American public rightfully consider the issue here one of fundamental public importance, but the thousands of people who earn their living working for labor unions ought to be afforded the protection of the labor statute.

The Board might argue, in response to this petition, that the issue here is of little public importance because this is the first case to come before the NLRB for decision involving unfair labor practice charges against

(Ind.) Journal Gazette, Paterson (N. J.) News, Lynchburg (Va.) News, Charlotte (N. C.) Observer, and Wichita (Kan.) Eagle, all in editions of August 29, 1955.

¹⁵ Petitioner would be the last to argue that editorial opinion is properly indicative of the correctness of a legal ruling, but presents these newspaper views merely to show the grave national concern over the NLRB decision.

a labor union as an employer.¹⁶ But such an argument ignores the restraining influence that Sec. 2 (2) must have exercised over the years. Most labor unions, engaged in the primary activity of protecting and fighting for employee rights, would not care to have the unwholesome publicity that would pursue their unfair dealings with their own employees. Thus, it was not until the mammoth Teamsters Union, notoriously disdainful of public opinion, ruthlessly interfered with rights of its employees that any union was willing to take a stand for its "right" to deal unfairly with its own workers. Now that the NLRB rejection of jurisdiction has been approved by the Court of Appeals, other unions are free to quietly "handle" their employees as self-interest dictates.

But in view of the critical question of whether our law provides for equal treatment for both business employers and labor union employers, and in view of the impressive public interest shown by the press reports of the NLRB ruling, can the Board seriously argue this case is lacking in sufficient public importance to justify this Court's review?

There is another factor in this case that makes it particularly appropriate for Supreme Court review now. If this decision is allowed to stand, there won't

¹⁶ As dissenting members Rodgers and Leedom pointed out (J. A. 1797, fn. 12), a partial search of the Board's files since 1947 showed that charges had been filed against unions as employers in 28 cases prior to this one. In 15 of these cases, unions were charged with acts of discrimination against their employees, and 13 others charged them with refusing to bargain with their employees. These cases were disposed of in one administrative manner or another, but the statement of Members Rodgers and Leedom indicates that in each instance, the processes of the Board were called into play, thus assuming that the Board would exercise its jurisdiction in each and every instance.

be any more unfair labor practice cases brought against unions as employers. Consequently, there will be no further court tests of the validity of the Board's refusal to take jurisdiction. Under the National Labor Relations Act, complaints in unfair labor practice cases are issued only by the General Counsel.¹⁷ If this ruling stands as the Board's position, the General Counsel will have no cause to issue complaints in the future, even if charges are filed. And it is doubtful that any parties, aware of Board "law" as they are, would be willing to go through the futile motions of even filing charges. This one case could be the total life of this issue, in contrast to other great public issues which may arise with frequency in all sections of the country, before courts of the various states and throughout the federal districts.¹⁸ This Court is the court of last resort in the most literal sense.

With the searching question of the fairness of our labor laws before us, with a result standing now "paradoxical and unwarranted," with the chronicles of public opinion, the newspapers, voicing uniform concern over the present outcome, the decision that labor unions do not have to obey the law toward their own employees ought not to stand without final review by the Supreme Court of the United States. The importance of this issue warrants granting this petition.

¹⁷ Sec. 3 (d), National Labor Relations Act, as amended, 29 U. S. C. Sec. 153 (d).

¹⁸ If it be argued that Congress can readily correct the NLRB result by amending the statute, it should be pointed out that Congress ought not be required to sit as a post-decision appellate court whenever the NLRB obtains court approval for an erroneous ruling. Congress has properly provided for judicial review of administrative decisions to correct such gross errors as are presented here.

II. Agency Above Congress: The NLRB Flouted the Express Will of Congress in Excluding Unions as Employers From Coverage of the Law

The critical legal question pervading this case is whether the administrative agency used its discretion to override a statutory policy established by Congress. When an agency ignores the Congressional will, there should be little doubt that such action is unlawful. The Court of Appeals for the Second Circuit recently took that position in *Pederson v. NLRB*, F. 2d , 38 LRRM 2227, in finding the Board had abused its discretion in rejecting jurisdiction of a case. "Where the Board acts arbitrarily or capriciously or *where its action conflicts with a clear purpose of the statute*, it has exceeded its authority," said the Court (emphasis added).

The "clear purpose" of Sec. 2 (2), based upon the language of the provision, and the legislative history that accompanied it, was that when labor unions acted as employers, they should be liable for unfair labor practices like any other employer. The Board has used its "discretion" to rule that when labor unions act as employers, they are not to be held liable for unfair labor practices like any other employer. The Court of Appeals has approved that holding.

The Court of Appeals majority was in error when it failed to find that Congress wanted labor unions as employers held liable for their unfair labor practices. Referring to Sec. 2 (2), the majority said: "It put labor organizations in the category of employers as to their own employees, but it did not more than that." To paraphrase the Court of Appeals majority, Congress merely said that when labor unions act as employers, we shall define them in the Act as employers.

Then, the Board is free to determine whether it wishes to take jurisdiction over them or not in its wisdom of discretion. This was precisely the position of the NLRB majority which argued that all Sec. 2 (2) meant was that unions were placed in the category of employers as to their own employees, and thereafter, the Board was free to exercise its own broad discretion as to what it would do about asserting its jurisdiction.¹⁹

The Court of Appeals closed its eyes to the legislative history of Sec. 2 (2). A penetrating and analytical judiciary, following the wise words of Chief Justice John Marshall, "Where the mind labours to discover the design of the legislature, it seizes everything from which aid can be derived . . ." ²⁰ needs only to evaluate the totality of Congressional conduct on this statutory section to realize that the legislature unquestionably intended that labor unions as employers should be held liable for their unfair labor practices. A short summary of the Congressional action so demonstrates:

1. The first national labor bill, S. 2926, introduced by Sen. Wagner in the 73rd Congress in 1934, excluded labor unions specifically from the definition of employer.²¹

2. Hearings were held on S. 2926 before the Senate Committee on Education and Labor, and witnesses

¹⁹ J. A. 1790.

²⁰ *United States v. Fisher*, 2 Cranch 358, 386, cited approvingly by this Court in *United States v. Universal C.I.T. Credit Corporation* 344 U. S. 218, 221.

²¹ NLRB Compilation of Legislative History of NLRA, 1935, p. 2.

forcefully criticized the exclusion of unions from the definition of employer.²²

3. When S. 2926 was favorably reported out of Committee, the section in issue had been changed to the same language that is in the law today, including unions within the definition of employer "when acting as an employer."²³ This was undoubtedly in response to the criticism of witnesses during hearings.

4. Accompanying S. 2926 was Senate Report No. 1184, 73rd Cong., 2nd Sess., May 26, 1934, which said:²⁴

"The reason for stating that 'employer' excludes 'any labor organization, other than when acting as an employer' is this: In one sense every labor organization is an employer, it hires clerks, secretaries and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides.

²² "There is no reason why a labor organization or anyone acting in the capacity of an officer or agent of such labor organization who hires employees should not be termed and considered an employer. No reason exists why labor organizations should be exempt from the provisions of this Act." Remarks of L. L. Balleisen, secretary, Industrial Division, Brooklyn Chamber of Commerce, Board Compilation, p. 690.

"This exclusion of labor organizations as employers is unfair per se if the philosophy of the bill itself is consistent with justice. It is, no doubt, based upon the erroneous assumption that anyone working for a labor organization is perforce guaranteed the same treatment as is provided for in the bill. . . ." Remarks of Leslie Vickers, economist, American Transit Association, Board Compilation, p. 720. Mr. Vickers was rightfully foreseeing the kind of conduct which the Teamster respondents below engaged in twenty years later.

²³ NLRB Compilation of Legislative History of NLRA, 1935, p. 1085.

²⁴ NLRB Compilation, p. 1102.

But in relation to other employees it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization."

Thus, after criticism in hearings that unions as employers should not be exempt from the bill, the Committee said that a "labor organization ought to be treated as an employer, and the bill so provides." This must mean that Congress desired that labor unions when acting as employers be liable for their unfair labor practices like any other employer.

5. After the 73rd Congress failed to act on the labor bill, Sen. Wagner introduced S. 1958 in the First Session of the 74th Congress. This bill was enacted into law as the National Labor Relations Act, popularly known as the Wagner Act, and again, the employer definition section excluded labor organizations altogether.²⁵

6. In hearings before the Committee, criticism was again aimed at the exclusion of labor unions from the definition of employer.²⁶

7. When S. 1958 was reported favorably out of Committee, the material portion of Sec. 2 (2) was again changed to read precisely as it does today.²⁷

²⁵ NLRB Compilation, p. 1295.

²⁶ Robert C. Graham, vice president of Graham-Paige Motors Corp., in listing criticisms of the bill, enumerated this one as follows: "This bill, in paragraph (2) of Section 2, excludes 'any labor organization from any of the requirements to which employers are subjected by this bill'." Board Compilation, p. 1990.

²⁷ NLRB Compilation, p. 2286.

8. Accompanying S. 1958 was Senate Report No. 573, 74th Cong., 1st Sess., explaining why unions were excluded, except when acting as employers.²⁸ This explanation was similar in tone and content to that made by the predecessor committee.

The author of the labor Act intended to exclude unions as employers from provisions of the law. This would have produced the result which the National Labor Relations Board has given us twenty years later in its "discretion." Criticism of that result in committee was made by witnesses who argued that unions when acting as employers should be held to the provisions of the law. Successive Committees amended the bill to change the intent of the sponsor and bring unions when acting as employers within the statute's provisions. By bringing unions when acting as employers within the provisions of the Act after the author of the bill had omitted them, and particularly after witnesses had criticized the author's exclusion for the same equitable reasons that persist today, Congress demonstrated a clear purpose that it wanted labor unions when acting as employers held liable for their unfair labor practices.

It was an abuse of the Board's discretionary jurisdiction to reject the Congressional purpose and substitute its judgment on what would effectuate the policies of the Act. It was error for the Court of Appeals

²⁸ NLRB Compilation, p. 2305. The Report stated:

"The term 'employer' excludes labor organizations, their officers and agents (except in the extreme case when they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions."

to find that Congress did no more than include unions within the definition of employer and leave the NLRB free to decide in its discretion whether it desired to exercise jurisdiction over these union employers. The Court of Appeals wrongfully allowed the NLRB to use its "discretion" to amend the statute back to the original language of Sen. Wagner after Congress had methodically demonstrated it did not desire that result.

The second error of the Court of Appeals was in its finding that the Board's placing of unions in a jurisdictional category with "non-profit" employers was not arbitrary.²⁹ When Congress undertook to amend the labor statute in 1947, the House bill, H. R. 3020, in defining employer, had language that excluded "any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."³⁰ The Senate removed this broad exclusion, and the Conference Report stated:

"... The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act."

²⁹ This error comes into issue only if the Court of Appeals was correct in holding that Sec. 2(2) allows the Board to exercise its discretion to determine whether or not it will take jurisdiction over unions as employers.

³⁰ J. A. 1799-1800.

Thus, Congress was approving the Board's policy of not taking jurisdiction over religious, charitable, scientific, literary or educational organizations, not "nonprofit" groups as a whole. Labor unions, who operate for the intensely practical purpose of bringing economic betterment to their members, are neither religious nor charitable nor scientific nor literary nor educational organizations. To place them into such a jurisdictional category is arbitrary conduct, especially when the Board itself, in the same opinion contested here, referred to "... labor organizations . . . when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme . . ."³¹ And one sentence later, the Board made reference to "... the singular characteristics of their institutional operations."³²

Because of their "singular characteristics," because of the inherent equity in dealing with union employers equally with business employers, because of their specific statutory mention,³³ it was arbitrary and capricious for the Board to place unions in a jurisdictional category with the Lutheran Church and Columbia University,³⁴ and it was error for the Court of Appeals

³¹ J. A. 1791.

³² J. A. 1791.

³³ Judge Bazelon's dissenting opinion below said: "I think Sec. 2 (2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees."

³⁴ *Lutheran Church, Missouri Synod*, 109 NLRB 659; *The Trustees of Columbia University*, 97 NLRB 424.

to approve this odd rationalization for an unwholesome result.

III. Conflict Among the Decision Makers: There Is No Majority Reasoning to Support This Paradoxical and Unwarranted Result

While admittedly there is no conflict among decisions of appellate courts on the issues here, since but one Court of Appeals has passed on the Board's ruling, Petitioner does want to point out there is no majority reasoning to support the result in this case.

Nine adjudicators have ruled thus far. The Trial Examiner held that jurisdiction ought to be asserted, based on the Board's prior ruling in *Air Line Pilots Association, supra*, and the language of Sec. 2 (2). Two dissenting members of the NLRB said that Sec. 2 (2) and its legislative history indicated a Congressional purpose to hold unions when acting as employers liable for unfair labor practices. Judge Bazelon, dissenting below, became the fourth adjudicator to agree that NLRB jurisdiction must be taken over unions when acting as employers.

Four decision-makers stand opposed in reasoning. The two controlling members of the NLRB, Chairman Farmer and Member Peterson, held that the Board was free to exercise its discretion to refuse jurisdiction. The two majority judges of the Court of Appeals agreed, approving substantially the reasoning of the two Board members.

The ninth adjudicator, Member Murdock of the Board, rested his decision on entirely different grounds, reading the legislative history as indicating that Congress meant to cover unions as employers only when these unions were engaged in commercial business.

Since the Board completely disregarded this view in the Court of Appeals by neither briefing nor arguing Member Murdock's aberrant position, and since the legislative history wholly fails to support Mr. Murdock, his reasoning ought not to merit further consideration.

An issue of basic public importance, decided in such a way as to bring into question the fundamental fairness of our labor relations law, should not be allowed to stand with no majority reasoning to support it. Only this Court can provide a final reasoning with sufficient authority to merit the confidence of our people.

CONCLUSION

For reasons heretofore presented, this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,896

OFFICE EMPLOYES INTERNATIONAL UNION,
LOCAL No. 11, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

Decided June 21, 1956

Mr. Joseph E. Finley for petitioner.*Miss Fannie M. Boyls*, Attorney, National Labor Relations Board, with whom *Mr. Marcel Mallet-Prevost*, Assistant General Counsel, National Labor Relations Board, was on the brief, for respondent.*Messrs. Clifford D. O'Brien* and *Richard Frank* filed a brief as *amici curiae*, urging affirmance.

Before PRETTYMAN, BAZELON and DANAHY, Circuit Judges.

PRETTYMAN, *Circuit Judge*. Petitioner, as its name implies, is a labor union primarily representing office and clerical employees. It filed with the Labor Board charges against a group of other organizations, mostly unions, known in this litigation collectively as the Teamsters. It alleged many unfair labor practices in respect to certain of the Teamster's office and clerical employees. The

dissenting Board members observed that "the violations charged to the Respondents [the Teamsters] not only run the entire gamut of employer unfair labor practices, but also include at least one novel variation." The Board itself said: "This is the first proceeding to be decided by the Board in its 20-year history in which labor organizations have been charged with committing unfair labor practices as employers in dealing with their own employees." An Examiner, after hearing, found most of the charges sustained. The Board did not disturb those findings or conclusions but found that the policies of the Act would not be effectuated by asserting jurisdiction in the proceeding, and so it dismissed the complaints in their entirety.

The Board agreed with the Examiner's interpretation of Section 2(2) of the Act,¹ that labor organizations are employers with respect to their own employees. The Board then said it must determine in respect to these respondents (the Teamsters), as in respect to all other employers, whether they are engaged in commerce or activities affecting commerce and, if so, whether the policies of the Act would be effectuated by asserting jurisdiction over them.

Proceeding with the inquiry the Board first found that these unions are non-profit organizations. It then applied to them the standards it says it regularly applies to non-profit organizations, citing cases to illustrate the application to universities, orchestras and such. It says it asserts jurisdiction over such organizations "only in exceptional circumstances and in connection with purely commercial activities". It found the Teamsters' activities to be, "obviously, not substantial engagement in a commercial venture" within the meaning of its rules. The foregoing was enough to dispose of the cases.

¹ 61 STAT. 137 (1947), 29 U.S.C.A. § 152(2), providing in pertinent part: "The term 'employer' . . . shall not include . . . any labor organization (other than when acting as an employer) . . ."

Cast in the frame indicated by the foregoing we think the decision fell within the broad discretion which seems to be established as applicable to the Board's actions in entertaining complaints. For example, in *Labor Board v. Denver Bldg. Council*,² the Supreme Court said:

"Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

Other cases are to the same effect.³

The Board did not hold that labor organizations are not employers in respect to their employees. It held that ~~they are. It held that~~ Section 2(2) of the Act placed labor organizations in precisely the same status under the Act as are all other employers. It then applied to these respondent employers the rules it has already established for other employers. To be sure, this is not a case in which the Board had merely to apply to this union a rule theretofore established by it relative to unions. In this case, the first involving unfair labor practice charges against a union, the Board fashioned a rule out of the material and criteria theretofore established by it for use in a certain category. It found the criteria customarily applied to that category applicable to a union. In essence it treated the union as an employer.

² 341 U.S. 675, 684, 95 L.Ed. 1284, 71 S.Ct. 943 (1951).

³ *Labor Board v. I. & M. Electric Co.*, 318 U.S. 9, 18, 87 L.Ed. 579, 63 S.Ct. 394 (1943); *National Labor Relations Bd. v. Newark Morning L. Co.*, 120 F.2d 262, 268 (3d Cir. 1941), *cert. denied*, 314 U.S. 693, 86 L.Ed. 554, 62 S.Ct. 363 (1941); *Haleston Drug Stores v. National Labor Relations Bd.*, 187 F.2d 418, 420-422 (9th Cir. 1951); *Local Union No. 12 v. National Labor Relations Board*, 189 F.2d 1, 3-5 (7th Cir. 1951).

It is argued by petitioner that by inserting the specific provision in Section 2(2) Congress removed from the area of Board discretion the jurisdiction of the Board in respect to labor organizations. We think the provision cannot be given so broad an effect. It put labor organizations in the category of employers as to their own employees, but it did no more than that.

The conclusions of the Board with reference to the non-profit character of these labor organizations, the reasoning with which it supports its criteria for jurisdiction, and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious. Our function in these areas of administrative discretion goes no further.

In the course of its opinion the Board expressly overruled a prior case⁴ in which it had assumed jurisdiction in a representation matter involving a union and its employees. But the Board has power to change its mind, just as a court does, and both of two conflicting views are often rational, neither arbitrary nor capricious.

The Board in its "Decision and Order" went on to say that, even if the criteria applicable to non-profit organizations generally were not applied to the Teamsters, the Board would not assert jurisdiction, because no other existing jurisdictional criteria apply. The Board said:

"We do not believe that labor organizations, which, when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme, should be made subject to any of the standards originated for business organizations. Accordingly, we would, at least, require for labor organizations as employers the establishment of a jurisdictional standard contemplating the singular characteristics of their institutional operations. In

⁴ Air Line Pilots Association, 97 N.L.R.B. 929 (1951).

presenting this case for Board determination the General Counsel failed to suggest any such standard."

The Board did not rest its conclusions and order on this latter part of its opinion and did not discuss the matter in its brief here. We need not treat of it but are constrained to comment that under the statutory scheme of organization the General Counsel to the Board does not seem to us to have a responsibility for the formulation of jurisdictional criteria for the Board itself. He has responsibility for filing complaints. In so far as the Board itself has a discretion in respect to jurisdiction over complaints once filed, it must take the responsibility for its own standards.

The order of the Board will be

Affirmed.

BAZELON, *Circuit Judge*, dissenting: I think § 2(2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees. Hence I think the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO.
11, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the National Labor Relations Board is reported at 113 NLRB No. 111. The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 235 F. 2d 832.

JURISDICTION

Certiorari was sought to review a judgment of the Court of Appeals for the District of Columbia Circuit entered on June 21, 1956. Jurisdiction of this Court was invoked under 28 U. S. C. Section 1254 (1). Certiorari was granted November 13, 1956.

THE STATUTE INVOLVED

National Labor Relations Act 61 Stat. 136 as amended, Section 2(2), 29 U. S. C. Sec. 152(2):

“(2) The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal reserve bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.”

QUESTIONS PRESENTED

1. Whether the refusal of the National Labor Relations Board to assert jurisdiction over unfair labor practices of Teamsters Unions as employers against their own employees was contrary to the expressed will of Congress and thus arbitrary and capricious?

2. Whether the National Labor Relations Board acted arbitrarily and capriciously in placing labor unions as employers in a category with religious, educational, and scientific organizations for jurisdictional purposes?

STATEMENT OF THE CASE

Petitioner is labor union in Portland, Oregon, and is a constituent part of the Office Employees International Union, AFL-CIO. The Office Employees International Union and all its affiliated local unions are

primarily engaged in representing office and clerical employees for the purposes of collective bargaining.

In 1954, petitioner filed a series of charges with the National Labor Relations Board alleging that several unions and other affiliates of the International Brotherhood of Teamsters, and also including the International union, as employers, had committed various unfair labor practices against their own office and clerical employees. Six complaints were issued by the General Counsel of the Board, charging the International Brotherhood of Teamsters and its affiliates involved,¹ hereinafter referred to as the Teamsters, or Teamster organizations, as employers, with violations of Sections 8 (a) (1), (2), (3), (4), and (5) of the National Labor Relations Act, 29 U. S. C. A. Sec. 158 (a) (1), (2), (3), (4), and (5), embracing each and every one of the employer unfair labor practice provisions of the law.

Extensive hearings were held before a Trial Examiner and his Intermediate Report was issued on January 10, 1955 (R. 194a), in which he sustained virtually all the charges. Among the various Teamster respondents, violations were found of all five of

¹ The Teamster organizations involved were: (1) the International Brotherhood of Teamsters, (2) Teamster Local No. 206, Portland, Oregon, (3) Teamster Local No. 223, Portland, Oregon, (4) Teamsters' Joint Council of Drivers No. 37, Portland, Oregon, which coordinates the activities of 23 Teamster local unions in Oregon and Washington, (5) Oregon Teamsters' Security Plan Office, Portland, Oregon, which administered trust funds established by collective bargaining agreements between various Teamster locals and employers in Oregon, Washington, Idaho and Montana, and (6) Teamsters Building Association, Inc., a nonprofit corporation owning and operating a small office building in Portland, whose tenants were exclusively Teamster organizations (R. 230a-231a).

the employer unfair labor practice provisions of the law.² These sweeping violations brought forth the caustic comment by dissenting NLRB Members Rodgers and Leedom that the Teamster violations not only ran the entire gamut of employer unfair labor practices, but also included at least one novel variation, in that no case had previously been found in the entire 20 years of the Board's experience where an employer had visited reprisals upon Board witnesses even before they had testified (R. 241a).

The Examiner found that jurisdiction should be asserted over the Teamsters unions as employers. In the only previous NLRB decision on jurisdiction over labor unions as employers, *Air Line Pilots Association*, 97 NLRB 929, the Board had found that Congress intended that labor unions be treated like any other employer with regard to their own employees, that the union employer involved was multi state in character, and that jurisdiction would therefore be asserted. Following this precedent, the Examiner found the

² The Examiner found that the International, Security Plan Office, and Locals 206 and 223 had violated Section 8 (a) (1) and (2) of the Act by their solicitation of employees of the Security Plan Office and Locals 206 and 223 to join Local 223 rather than petitioner; that Security Plan Office, Building Association, and Joint Council had violated Sec. 8 (a) (1), (2), (3), and (4) of the Act by unlawfully discharging three employees and one supervisor in anticipation of their giving testimony at a Board hearing in support of charges in one of the complaints; that Local 206 had violated Sec. 8 (a) (1) and (3) by discharging an employee because she had refused to cross a picket line established by petitioner; that Security Plan Office had violated Sec. 8 (a) (5) by refusing to bargain with petitioner, although petitioner represented a majority of the employees of Security Plan Office; and that the International and one of its representatives, Sweeney, had violated Sec. 8 (a) (1) of the Act by seeking to influence the testimony of a witness at a Board hearing (R. 240a).

Teamsters unions well within the meaning of the term "multi-state enterprise", that their activities affected commerce, and that it would effectuate the policies of the Act to take jurisdictions over them³ (R. 232a).

Exceptions to the Trial Examiner's Intermediate Report were filed with the NLRB, oral argument was heard limited to the question of the exercise of the Board's jurisdiction, and on August 25, 1955, the Board handed down its decision, refusing to assert jurisdiction over these unions as employers. Accordingly, the complaints were dismissed.

The controlling majority of the Board, Chairman Farmer and Member Peterson, set forth their reasoning in this manner:

1. While the Teamsters were employers under the Act, the Board was free to determine whether or not their activities affected commerce and whether it would effectuate the policies of the Act to take jurisdiction, which was consistent with "the undisputed legislative intent" to empower the Board to decide whether to assert jurisdiction over particular employers (R. 233a).

2. All the Teamster organizations were nonprofit in character, whose basic aims were to improve the "working conditions of workers, increase their job se-

³The Examiner found that the International Brotherhood of Teamsters was a national labor organization with 872 chartered local unions and 1,204,477 members, and in the year ending December 31, 1953, had a total revenue of \$6,587,327, of which \$5,755,232 represented remittances to its offices in Washington, D. C. He further found that the International and its constituent locals constituted one integrated, closely-knit national organization (R. 94a).

curity, and otherwise promote their general welfare" (R. 233a).

3. Accordingly, the Teamster employers, for jurisdictional purposes, must be treated like other nonprofit organizations.

4. Jurisdiction is not normally asserted over nonprofit employers; therefore, since the Teamsters are nonprofit and they are not engaged in commercial ventures, jurisdiction will not be asserted over their activities (R. 234a).⁴

Member Abe Murdock concurred in a separate opinion, which was not briefed or argued by the Board in the Court of Appeals, and accordingly, the concurring opinion will not be treated further here, since the Court of Appeals did not consider it, and since petitioner believes the Board will not urge it upon this Court.

Two dissenting NLRB Members, Rodgers and Leedom, expressed their strong disagreement with the Board holding in arguments that are somewhat similar to those advanced by petitioner hereinafter.

⁴ The Board majority said that, accordingly, effect upon commerce within the meaning of the Act had not been established (R. 234a). However, earlier in its opinion (R. 230a), it stated: "The Board finds that it will not effectuate the policies of the Act to assert jurisdiction in this proceeding . . ." The two dissenting members, Rodgers and Leedom, apparently assumed that the Board was not asserting jurisdiction because it would not effectuate the policies of the Act (R. 243a). In view of the previously cited figures that Teamster operations in 1953 involved more than five and one-half million dollars passing across state lines, the Board could hardly find that commerce was not affected. Petitioner believes the only reasonable interpretation of the NLRB ruling is that the Board declined jurisdiction on the grounds that it would not effectuate the policies of the Act.

The majority of the Court of Appeals said "the decision fell within the broad discretion which seems to be established as applicable to the Board's actions in entertaining complaints."⁵ With regard to Sec. 2 (2) of the Act, the Court of Appeals said that provision put labor organizations in the category of employers as to their own employees, but it did no more than that. Then, in summation of its reasoning, the Court concluded:

"The conclusions of the Board with reference to the non-profit character of these labor organizations, the reasoning with which it supports its criteria for jurisdiction, and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious. Our function in these areas of administrative discretion goes no further."

Judge Bazelon dissented, stating that Sec. 2 (2)'s strikingly particular reference to labor unions sharply differentiated them from non-profit organizations generally. Hence, he concluded, the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction.

Certiorari to the Court of Appeals was sought, the writ was granted on November 13, 1956, and the case is here seeking reversal of the erroneous ruling of the Court of Appeals.

⁵ The Court of Appeals then cited *Labor Board v. Denver Bldg. Council*, 341 U. S. 675, where this Court said, at 341 U. S. 675, 684: "Even when the affect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

SUMMARY OF ARGUMENT

When the National Labor Relations Board declines to assert its jurisdiction in a manner that is contrary to the intent of Congress, the Board acts arbitrarily and erroneously as a matter of law. Congress, when it included unions when acting as employers within the statutory definition of employer, intended that union employers be held liable for their unfair labor practices. The inclusion of unions when acting as employers within the employer definition of Sec. 2 (2) of the Act could not have meant that Congress was reposing in the Board a discretion to remove unions as employers from the coverage of the Act after Congress had specifically included them.

The legislative history also shows the affirmative intent of Congress. In both the 73rd and 74th Congresses, Senator Wagner introduced a labor bill that excluded unions as employers from the law altogether. Witnesses in hearings in both Congresses were critical of this blanket exclusion and on each occasion, the Senate Committee amended the original bill to bring unions within the coverage of the Act when they were acting as employers.

The Board, supported by the Court of Appeals, has claimed that all the statute does is include unions as employers and leave the Board free to exercise its discretion as to whether it will take jurisdiction over these employers. But just as the Board does not have discretion to decline jurisdiction over all employers, neither does it have the discretion to exclude an entire class of employers without some sanction from Congress, or some affirmative reasons based upon inferences reasonably drawn from Congressional sanction. There is not only an absence of Congressional sanction for the ex-

clusion of union employers as a class, but there is specific Congressional inclusion of them within the statute.

It was arbitrary and unreasonable for the Board to place unions as employers within a jurisdictional category of so-called non-profit, non-commercial employers. The Board has Congressional sanction for declining jurisdiction over employers engaged in religious, charitable, scientific, literary, or educational activities, but this approval was granted in a specific context that included labor union employers within the Act. As Judge Bazelon said in his dissent in the Court of Appeals, Section 2 (2)'s strikingly particular reference to unions as employers distinguishes them from non-profit employers generally, and it was wrongful for the Board to place unions in such a jurisdictional category. The Board itself in its opinion in this case recognized that unions are "institutions unto themselves."

Furthermore, to exclude union employers from the coverage of the Act after Congress specifically included them, the Board ought to be held to a strong showing of how it would affirmatively effectuate the policies of the Act to exclude union employers. The Board has not done so, since the mere inclusion of union employers within a category of so-called non-profit employers is no reasoning at all. Equity and sound policy dictate that union employers should be held liable for their unfair labor practices just as other employers are.

ARGUMENT

I. THE REFUSAL OF THE NATIONAL LABOR RELATIONS BOARD TO ASSERT JURISDICTION OVER UNFAIR LABOR PRACTICES OF TEAMSTERS UNIONS AS EMPLOYERS WAS CONTRARY TO THE EXPRESSED WILL OF CONGRESS AND THUS WAS ARBITRARY AND CAPRICIOUS.

(a) The Labor Board Has No Authority to Ignore the Intent of Congress in Establishing Jurisdictional Criteria.

The fundamental premise on which petitioner's first argument is based is that when the National Labor Relations Board establishes a discretionary jurisdiction which is contrary to the intent of Congress in enacting the statute, this NLRB action is arbitrary and capricious, and thus wrongful as a matter of law. This must be so, or else the administrative agency would place itself in the position of substituting its judgment for that of Congress, which it has no authority to do. The most precise judicial expression of this premise came in the recent Second Circuit ruling in *Pederson v. NLRB*, F. 2d, 38 LRRM 2227, where the Labor Board was reversed for an abuse of its discretion in rejecting jurisdiction over an unfair labor practice proceeding. "Where the Board acts arbitrarily or capriciously or *where its action conflicts with a clear purpose of the statute*, it has exceeded its authority," F. 2d, 38 LRRM 2227, 2229 (Emphasis added).

Petitioner believes this premise is so well-founded and unquestioned that it wishes to turn quickly to the next phase of the argument, to demonstrate that it was the intention of Congress that labor union employers be held liable for their unfair labor practices.

(b) Congress Desired That Union Employers Be Held Responsible for Their Unfair Labor Practices.

It is undisputed that Sec. 2 (2) of the Act provides that when labor unions deal with their own employees, they are covered by the statute as employers. The Court of Appeals thought, and the two controlling NLRB members thought, that this statutory provision meant only that union employers were subject to the law, and that thereafter, the Board was free to deal with them as it does with any other employer with regard to whether it will assert or decline jurisdiction. The implications of this reasoning are that Congress must have said, "We will bring unions as employers within the coverage of the law, but we will leave it to the Board to determine whether or not it wishes to assert its jurisdiction over their activities," or stated differently, "While we have specifically included unions as employers within the law, the NLRB, if it wishes, may nullify our inclusion in its discretion."

It is petitioner's position, of course, that Congress could not have meant to repose a power in the hands of the NLRB to undo what Congress had done in Sec. 2 (2) when it included unions as employers within the statutory coverage. In other words, by its enactment of Sec. 2 (2) and by the legislative history which accompanied it, Congress revealed its intention that labor union employers should be held liable for unfair labor practices just as commercial employers are. And when the NLRB chooses to ignore that intention by declining jurisdiction, such Labor Board action becomes arbitrary and capricious, and thus wrongful as a matter of law.

The specific statutory reference in Sec. 2 (2) to unions as employers is in itself a strong indication of

the affirmative desire of Congress. But when the legislative history of the provisions is added to the statutory language, it is difficult to understand how both the Board majority and the Court of Appeals majority could have concluded that Sec. 2 (2) did no more than include unions as employers within the Act and leave the Board free to use its discretion as to whether or not it would assert its jurisdiction.

A comprehensive national labor law was first proposed in the Second Session of the 73rd Congress in 1931 when bills were introduced in both the Senate and the House. The late Senator Robert F. Wagner (D., N. Y.), the father of our modern labor law, introduced S. 2926 in 1934, which was favorably reported out of the Senate Committee on Education and Labor, but failed of enactment into law.

When Sen. Wagner first introduced S. 2926, it contained in the exclusion from the definition of employer this language, "or any labor organization . . .,"⁶ thus demonstrating that Sen. Wagner intended that unions as employers be excluded from the statute's coverage. During hearings on S. 2926, several employer witnesses were openly critical of the exclusion of labor organizations from the definition of employer.⁷

⁶ NLRB Compilation of Legislative History of NLRA, 1935, p. 2.

⁷ "There is no reason why a labor organization or anyone acting in the capacity of an officer or agent of such labor organization who hires employees should not be termed and considered an employer. No reason exists why labor organizations should be exempt from the provisions of this Act." Remarks of L. L. Balleisen, secretary, Industrial Division, Brooklyn Chamber of Commerce, Board Compilation, p. 690.

"This exclusion of labor organizations as employers is unfair per se if the philosophy of the bill itself is consistent with justice. It is, no doubt, based upon the erroneous assumption that anyone

Consequently, the language of Section 3 (2) of S. 2926 (the predecessor of present Section 2 (2), was amended in committee to read, "or any labor organization (other than when acting as an employer) . . .".⁸ This is the exact language that exists in the law today.

When S. 2926 was reported favorably out of committee, it was accompanied by Senate Report No. 1184, 73rd Congress, 2nd Sess., May 26, 1934, which contained the following explicit explanation of why the language of the provision under scrutiny was so written:⁹

"The reason for stating that 'employer' excludes 'any labor organization, other than when acting as an employer' is this: In one sense every labor organization is an employer, it hires clerks, secretaries and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides. But in relation to other employees it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization."

In the First Session of the 74th Congress in 1935, Senator Wagner again introduced his labor bill as S. 1958,¹⁰ and this bill a few months later became the

working for a labor organization is perforce guaranteed the same treatment as is provided for in the bill. . . ." Remarks of Leslie Vickers, economist, American Transit Association, Board Compilation, p. 720. Mr. Vickers was rightfully foreseeing the kind of conduct which the Teamster respondents below engaged in twenty years later.

⁸NLRB Compilation of Legislative History of NLRA, 1935, p. 1085.

⁹NLRB Compilation; p. 1102.

¹⁰NLRB Compilation, p. 1295.

National Labor Relations Act, popularly known as the Wagner Act. Senator Wagner's bill again excluded unions as employers.¹¹ During the hearings that followed, there was again criticism of the exclusion of unions as employers from the coverage of the bill.¹² When S. 1958 was reported out by the Committee on Education and Labor on May 2, 1935, Section 2 (2) was changed to read as did the employer exclusion provision in S. 2926 in the 73rd Congress after that bill was reported favorably,¹³ back to the present language of the law.

Senate Report No. 573, 74th Congress, 1st Sess., accompanying S. 1958, had this statement concerning the treatment of unions as employers in Section 2 (2):¹⁴

"The term 'employer' excludes labor organizations, their officers and agents (except in the extreme case when they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions."

Apparently, the reason for the partial exclusion of unions from the employer definition was because Section 8 (1) of the Wagner Act prohibited employers

¹¹ NLRB Compilation, p. 3296.

¹² Robert C. Graham, vice president of Graham-Paige Motors Corp., in listing criticisms of the bill, enumerated this one as follows: "This bill, in paragraph (2) of Section 2, excludes 'any labor organization from any of the requirements to which employers are subjected by this bill'." Board Compilation, p. 1990.

¹³ NLRB Compilation, p. 2286.

¹⁴ NLRB Comilation, p. 2305.

from interfering in the activities of employees. Since, as the Senate Committee in the 73rd Congress indicated, "every labor organization is an employer," Congress wanted to make sure that there could be no errant interpretation that unions could not participate in the organizational activities of employees.

Now, in retrospect, how does this legislative history affirmatively show that it was the intent of Congress that unions as employers be held liable for their unfair labor practices? Or does this history do no more than the Board claimed, and as the Court of Appeals apparently thought, that is, merely included unions as employers and no more than that, and left it to the Board to make a determination as to whether jurisdiction should be exercised?

First of all, the inclusion of unions as employers was an affirmative decision of Congress after the original bills had excluded them altogether. Senator Wagner, the author of the Act, twice attempted to exclude unions from the employer definition, which would have given us the same result that the Board has arrived at in its ruling in this case. But Congress rejected that action, and wrote specific language into the statute to cover unions as employers.

The chain of circumstances leading to this affirmative inclusion of unions as employers is a powerful demonstration of what Congress intended. In 1934, the Senate Committee, with Wagner's bill before it, heard witnesses complain about the unfairness of excluding unions from the employer definition. The Committee amended the bill and brought unions as employers within its scope. But Sen. Wagner, with knowledge of this 1934 action, came back again in 1935 with the same exclusion that he had offered in his 1934 bill.

Again, the cry of unfairness was raised before the Committee, and the Committee responded by again bringing unions as employers within the scope of Sec. 2 (2). The remedy for this unfairness was to define unions as employers so they would be held liable for unfair labor practices, and Congress demonstrated that it wanted this result when it amended Sec. 2 (2). When this progression of events leading up to the enactment of the Labor Act is considered, it seems utterly unrealistic to accept the implications flowing from the Board decision—that Congress meant no more than to include unions as employers and leave it to the Board to exercise its discretion as to whether it would hold them liable for their unfair labor practices. Is there any one among us who really believes that?

Secondly, the time has come to take a searching look at just how far NLRB discretion extends. The Board has said in this case that while Sec. 2 (2) makes the union an employer, we have complete discretion to decide whether to take jurisdiction over employers. But is this so?

That the Board has some discretion we cannot dispute. But its discretion does not mean that it can decline jurisdiction over all employers, or else it could repeal the Act. In the past, the Board has primarily exercised its discretion with regard to jurisdiction in two areas: one, it has established jurisdictional yardsticks based upon a dollar volume of business to decline jurisdiction over a whole strata of smaller employers who are at or near the bottom of the financial scale among enterprises that affect the stream of commerce;¹⁵ and two, it has used its discretionary powers

¹⁵ *Breeding Transfer Co.*, 110 NLRB 493.

to decline jurisdiction in particular cases involving particular circumstances where it was thought that enforcement powers would not effectuate the purposes of the Act.¹⁶ This was the kind of situation the Court of Appeals for the Third Circuit was undoubtedly referring to in *NLRB v. Newark Morning Ledger Co.*, 120 F. 2d 262, at 268 (C. A. 3), when it remarked that Congress "reposed in the Board complete discretionary power to determine in each case whether the public interest requires it to act," and the Board's "jurisdiction is not to be exercised unless in the opinion of the Board the unfair labor practice complained of interferes so substantially with the public rights created by Section 7 as to require its restraint in the public interest."

Aside from these two primary areas where Board discretion concerning jurisdiction has been exercised, there is a third which concerns us most closely here. In this case, the Board has undertaken to exclude a whole class of employers (all labor unions who employ persons) from the coverage of the Act, claiming that it has the discretion to do so. Now, should the Board attempt to exclude the entire class of employers who manufacture automobiles or the entire class of em-

¹⁶ As illustrative, see *Godchaux Sugars, Inc.*, 12 NLRB 568, 576-579 (union had agreed not to press charges if employer would agree to an election); *Consolidated Aircraft Corp.*, 47 NLRB 694, 706-707 (failure of parties to exhaust arbitration procedures of their contract); *Timken Roller Bearing Co.*, 70 NLRB 500, 501 (union had instituted arbitration proceedings); *Allis-Chalmers Mfg. Co.*, 72 NLRB 855 (execution of contract rendered affirmative order unnecessary); *The McDonald Cooperative Dairy*, 58 NLRB 552, 553 (essentially local character of employer's business); cf., *Bausch & Lomb Optical Co.*, 108 NLRB 1555, where the Board relieved the employer of his obligation to bargain with a union chosen by his employees because these union members owned stock in a competing corporation.

ployers who manufacture steel, there ought to be instant recognition that such selectivity would be arbitrary and wrongful in law. There ought to be recognition that when the Board attempts to exclude any class of employers from coverage of the Act that such attempted exclusion ought to be carefully scrutinized and permitted to stand only upon the strongest justification.

The Board, of course, has excluded certain classes of employers from the coverage of the Act. Two of the most prominent are hotel employers and taxicab employers.¹⁷ In its leading decision on hotels, *Hotel Association of St. Louis*, 92 NLRB 1388, the Board looked for Congressional guidance, and relied upon remarks by Senator Taft¹⁸ as an indication that Congress considered the hotel industry as primarily local in character, and as such, one which should not be subject to NLRB jurisdiction. From this and other sources, there is drawn the implication (and perhaps rightfully so) that Congress was willing to allow the Board to use its discretion in excluding entire classes of employers or entire industries from the jurisdiction of the Act when their activities were primarily local in character, and their activities did not exert an appreciable influence on the stream of commerce. This is, of course, akin to the dollar volume jurisdictional standards adopted by the Board to exclude smaller employers whose business does not sufficiently affect commerce to warrant use of the Board's processes. Within

¹⁷ *Hotel Association of St. Louis*, 92 NLRB 1388 (hotels), and *Checker Cab Co.*, 110 NLRB 683 (taxicabs). Petitioner, however, would not want to concede that jurisdiction was properly declined over these industries.

¹⁸ See discussion of this point in dissenting opinion of NLRB Members Rodgers and Leedom, R. 244a.

this line of reasoning, the Board has declined jurisdiction over some entire classes of employers.

Prior to this case, the Board had also declined jurisdiction over entire classes of employers engaged in religious, charitable, scientific, literary or educational activities, or cultural activities closely related thereto (which the Board has attempted to broaden to include all so-called non-profit, non-commercial employers).¹⁹ Once again, the Board found Congressional approval in legislative history for such a broad exclusion of jurisdiction.²⁰

Thus, petitioner contends that for the Board to exclude an entire class of employers from the coverage of the Act, there must be either 1. specific Congressional approval, or 2. strong, rational reasons based upon inferences which may be drawn from Congressional intent. Any other broadscale exclusions of entire classes of employers would be arbitrary and capricious.

(Of course, the Board may well argue here that all it has done is place unions in the proper category of non-profit, non-commercial employers for jurisdictional purposes, and that it has the requisite Congressional approval for declination of jurisdiction. But this is wrongful, as this brief will point out herein-after. Furthermore, petitioner is attempting here to demonstrate that the Board may not decline jurisdiction over unions as employers even if it placed them

¹⁹ *Lutheran Church, Missouri Synod*, 109 NLRB 659; *Armour Research Foundation*, 107 NLRB 1052; *Philadelphia Orchestra Association*, 97 NLRB 548; *Trustees of Columbia University*, 97 NLRB 424.

²⁰ House Report No. 510, 80th Cong., 1st Sess., 32 (1947).

in some other category than non-profit, non-commercial employers.)

In this case, there is a specific statutory inclusion of unions as employers within the coverage of the law. This specific statutory reference, combined with the supporting legislative history, shows the affirmative intent of Congress that unions as employers should be held liable for their unfair labor practices. Now, this is not to say that the Board is deprived of its discretion to decline jurisdiction over *some* unions as employers, in the event there is a rational finding that some of these smaller union employers exert such meager affect upon commerce that it would not effectuate the policies of the Act to take jurisdiction over them. This vertical line-drawing of jurisdictional standards might be accomplished in a similar manner to that done with regard to all employers generally. But it is the total exclusion of unions as employers from the coverage of the Act that violates the intent of Congress, and that is arbitrary and wrongful.

The Board is apparently disturbed over this line of reasoning. It argued in the Court of Appeals below that it is not declining jurisdiction over all union employers as a class, but is declining jurisdiction only over union employers engaged in traditional trade union activities. When these unions as employers engage in commercial activities, jurisdiction will be asserted. The Board decision in this case implied this same line of reasoning (R. 234a).

In all fairness, this diversionary argument is unworthy of the National Labor Relations Board. The Board has implied, and its attorneys have argued below and will presumably argue again here, that unions as employers do occasionally engage in commercial

businesses. Now, there is no finding of fact in any record that unions have employees engaged in commercial enterprises. Because there might be magazine statements and arguments of individuals in Congressional hearings²¹ that unions engage in business does not establish as a fact that unions have employees who produce goods for commerce. As a matter of fact, petitioner does not know of a single instance in which a labor union has employees of its own who engage in commercial business. The Board, with this contention before it, has not been able to supply a single example to controvert this argument.²²

²¹ The Board cited in its Brief in Opposition to Certiorari, p. 9, these sources for the position that unions engage in business: *Nation's Business*, July 1955, pp. 46, 49-50; *Business Week*, January 1, 1955, p. 56; Peterson's *American Labor Unions* (N. Y. London, 1945), pp. 176-177; and Millis and Montgomery, *Organized Labor*, 1945, pp. 344-352.

The Board further cited certain witnesses in Congressional hearings for the proposition that unions engage in business, see Brief in Opposition to Certiorari, p. 8.

²² The Board cited below, and cited again in its Brief in Opposition to Certiorari, three cases as illustrative of unions engaging in business: *Bausch & Lomb Optical Co.*, 108 NLRB 1555; *Otter Trawlers Union, Local 53*, 100 NLRB 1187; Intermediate Report on *Guayama Bakers*, 27 LRRM 1322, 1323. Petitioner respectfully requests the Board to be more exact in its citations, and properly acknowledge that these cases are not in point to the proposition that unions have employees engaging in commercial business.

For example, in *Bausch & Lomb*, certain union members formed a corporation, in which 332 out of 336 shares of stock were owned by 124 union members, to compete in the optical business. The workmen were employees of the corporation, not of the union. In *Otter Trawlers*, the union did not engage in business at all. Owners of vessels belonged to the union, and the union was held as an agent of these owners of vessels. In *Guayama Bakers*, certain union members formed a membership cooperative to engage in baking. There was no employer-employee relationship, and the union involved had no employees at all.

The unsupported assumption that unions engage in business enterprises is perhaps founded on the fact that unions sometimes invest their funds in commercial businesses. They sometimes purchase stock in corporations, and may even purchase a controlling interest, or may even set up corporations to carry on business enterprises. But in each and every case, it is the corporation that is the employer, not the labor union. It would indeed be strange legal theory to maintain that corporate stockholders are the legal employers, not the corporation. Furthermore, an agency such as the National Labor Relations Board surely is aware of the common fact of labor union life that practically all unions function as unincorporated associations, and that for them to engage directly in commercial business, subjecting their members to individual liability, would be the height of folly.

Furthermore, the corporate employer, even if a union owned all the stock, would be subject to the provisions of the Act as an employer. This would be so even if Congress had enacted the labor statute as Senator Wagner originally attempted, and totally excluded unions as employers from the coverage of the law. Let us be done with the diversionary argument that the Board would take jurisdiction over unions as employers when they engage in commercial business.

Thus, we return to the argument that Congress wanted unions as employers held liable for their unfair labor practices. A Board refusal to take jurisdiction over unions as employers disregards that Congressional purpose. This is arbitrary and capricious action, and the Court of Appeals was in error in not recognizing it.

II. THE BOARD WAS ARBITRARY AND UNREASONABLE IN ITS PLACEMENT OF UNIONS AS EMPLOYERS IN A SO-CALLED NON-PROFIT, NON-COMMERCIAL CATEGORY FOR JURISDICTIONAL PURPOSES.

Without any reasoning to support a result which the dissenting NLRB members called "paradoxical and unwarranted,"²³ the Board majority based its jurisdictional finding in this case on the mere statement that the Teamsters were non-profit organizations (as all unions are), that their trade union functions were not related to commercial business, that the Board did not take jurisdiction over non-profit, non-commercial operations, and therefore, the Board would not take jurisdiction over these union employers.²⁴ The Court of Appeals, without questioning the absence of a rational discussion of the policies of the Act which would be involved, thought "the Board fashioned a rule out of the material and criteria theretofore established by it for use in a certain category."

Judge Bazelon, in a brief but analytical dissent, said that "Section 2 (2)'s strikingly particular reference

²³ Members Rodgers and Leedom strongly voiced their opinions on the strange result reached by the Board majority. "We believe such decision achieves a paradoxical and unwarranted result in permitting labor unions to deny to their own employees the very rights and privileges which unions have so vigorously advocated and won for the employees of others. Labor unions are now free to flout the very statutory provisions which they ardently championed, and which have been hailed as the Magna Charta of labor." (R. 239a).

"Employers who have been required to defend themselves before the Board against union charges of discrimination against employees, refusal to bargain with employee representatives, and other forms of interference with employee organizational rights, will no doubt be astonished to learn from the instant decision that the unions which filed the charges against them are free to engage in the very conduct for which they (the employers) are required to answer." (R. 240a).

²⁴ R. 234a.

to labor unions sharply differentiates them from non-profit organizations generally . . .” and that the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction. Aside from all the other considerations in this case, Judge Bazelon’s sharp thrust is alone enough to demonstrate the error of the two ruling bodies below.

The Court of Appeals was mistaken when it thought the Board fashioned a rule out of the material and criteria theretofore established by it for use in a certain category. Prior to this case, the Board had never operated under a blanket rule of exclusion of jurisdiction over all non-profit, non-commercial employers. It had declined jurisdiction over the operations of a university library,²⁵ over a symphony orchestra,²⁶ over a research laboratory,²⁷ and over a church-operated radio station.²⁸ It found legislative approval for this non-assertion of jurisdiction in House Report No. 510, 80th Cong., 1st Sess., 32 (1947), concerning the amendments to the National Labor Relations Act in 1947 which became popularly known as the Taft-Hartley Act.

When H. R. 3020 was passed by the House of Representatives in 1947 as its amended labor statute, the House added to the employer exclusion provisions of Section 2 (2) the following added exclusions: “any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or

²⁵ *Trustees of Columbia University*, 97 NLRB 424.

²⁶ *Philadelphia Orchestra Association*, 97 NLRB 548.

²⁷ *Armour Research Foundation*, 107 NLRB 1052.

²⁸ *Lutheran Church, Missouri Synod*, 109 NLRB 659.

for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual." The Senate bill did not contain this language, and in conference, the House version above was eliminated. House Report No. 510 explained the reason for this development, as follows:

"The conference agreement . . . follows the Senate amendment in the matter of exclusion of non-profit corporations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act."

The legislative approval for non-assertion of jurisdiction over non-profit employers was limited to religious, charitable, scientific, literary or educational organizations, or to organizations whose purposes are closely related, such as the Philadelphia Symphony Orchestra. There is no Congressional sanction for a blanket exclusion of all non-profit, non-commercial employers. What the Board has done in this case is attempt to place unions as employers in a jurisdictional category hitherto reserved for the university, for the symphony, for the research laboratory, for the church.²⁹

²⁹ Petitioner is not trying to argue that other non-profit organizations of a cultural or social or fraternal or public service nature should be either included or excluded from Board jurisdiction, for such questions are immaterial here. It is the inclusion of labor unions into this grouping for jurisdictional purposes that is arbitrary and wrongful.

It is this classification that is without reason, and thus wrongful in law.

This legislative approval for non-assertion of jurisdiction over non-profit organizations (religious, charitable, scientific, literary, or educational) could not be rationally extended to cover labor unions, since in the House Bill (H. R. 3020, 80th Congress), the enumeration of these so-called non-profit organizations in the amended Section 2 (2) was immediately preceded by the present language including labor unions as employers "when acting as an employer." Perhaps this is what Judge Bazelon meant when he said "Section 2 (2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally."

In any event, the Board itself, in its opinion, recognized that labor unions are "institutions unto themselves within the framework of this country's economic scheme . . ." and later made reference to ". . . the singular characteristics of their institutional operations." (R. 235a).³⁰ Then, by what right does the Board include this institution unto itself in a jurisdictional category with libraries, churches, and symphonies?

³⁰ Apparently, the Board majority was somewhat insecure about the result it reached, since it included a second reason in its opinion for declining jurisdiction. It said that assuming the standards for nonprofit employers were not applicable, it would not take jurisdiction because the General Counsel failed to suggest a proper jurisdictional standard which would be applicable to unions. (R. 235a).

Petitioner was vigorously critical of this reasoning in its argument in the Court of Appeals, and that court quite properly took the Board to task for this portion of its opinion. It is the Board's responsibility for the formulation of jurisdictional criteria, not the General Counsel's, said the Court of Appeals.

It would also seem that, in view of the specific Congressional inclusion of unions as employers within the coverage of the law, and in view of the common sense equity of holding unions as employers responsible for their unfair labor practices just as ordinary business employers are responsible, the Board ought to be required to provide sound policy reasons as to why it would effectuate the policies of the Act to decline jurisdiction over unions as employers. Since the Board majority gave no such reasons, is this not arbitrary and capricious in itself? In other words, when the Board attempts to exclude an employer from the coverage of Act on the grounds that it would not effectuate the policies of the Act to take jurisdiction, the Board ought to be compelled to support such a result with sound reasoning directed squarely at how these policies would not be effectuated. And, *a fortiori*, when Congress specifically places that class of employer within the law's coverage, the burden ought to be even greater on the Board to make a positive, affirmative, rational showing. The absence of this kind of reasoning thus becomes arbitrary administrative action which ought to be vigorously struck down by the courts.³¹

Based upon these considerations, it was error for the Court of Appeals to find that the Board was not arbitrary and capricious in its placing of unions as em-

³¹ There is not only an absence of any policy reasoning in the Board decision, but the policy reasoning provided by the dissenting Board members is overwhelming in its force as to why jurisdiction ought to be positively asserted. It is elementary justice that unions which seek to compel employers to treat their employees fairly ought to also be put to the same standard. It was this shocking unfairness that prompted such a plethora of unfavorable newspaper comment on the NLRB decision, see petition for writ of certiorari in this case, p. 10.

ployers within the category of so-called non-profit organizations for jurisdictional purposes.

CONCLUSION.

For the reasons hereinabove set forth, the decision of the Court of Appeals should be reversed. The case should be remanded to the National Labor Relations Board with directions for it to assume jurisdiction of the complaints and make findings on the substantive issues in this matter.

Respectfully submitted,

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U.S. Supreme Court, U.S.

FILED

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No. 432

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

OFFICE EMPLOYERS INTERNATIONAL UNION, LOCAL NO.
11, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO.
11, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

**I. THIS COURT SHOULD DECIDE THIS CASE ON THE ISSUES
PRESENTED**

The National Labor Relations Board has suggested to this Court (Br. 15-16) that it may be deemed appropriate to remand this case to the Board for its further consideration on the policy issue involved. The Board supports this suggestion with the assertion that of the four members who ruled on the policy question, only two would decline jurisdiction, while

another two would assert it. It is further pointed out that the two NLRB members who made up the controlling majority in this case are no longer with the agency (Br. 15). Inherent in this Board suggestion is the thought that now that two new members have joined the agency, replacing the two who primarily decided this case, that this change in personnel would produce a different policy result were the issue again presented to the NLRB.

Petitioner objects to this suggestion and requests this Court to rule on the issues presented.

First of all, despite the Board intimation, there is no assurance that two new members will take a policy view contrary to that previously expressed by Chairman Farmer and Member Peterson. Should this case go back, the two new members might conceivably rule as did Farmer and Peterson, Member Murdock may adhere to his former position, and petitioner would be left in the same fate as before. The Court of Appeals for the District of Columbia Circuit has already approved the Board's refusal to take jurisdiction, and petitioner would be faced with coming once again to this Court on a petition for certiorari to correct what it believes are serious errors in law.

Secondly, and more fundamentally important, the questions inherent in this case which might have inclined this Court to grant certiorari are far deeper than the vacillating policy views of an administrative agency based upon personnel changes. Even if the two new Board members did chart a policy reversing the old, then soon after these mortals pass on, other Board members could whisk the policy right back again to its former posture. Petitioner is arguing

here that the Board may not dabble in policy decisions at all in *this case* as a matter of law, based upon the statutory language and the intent of Congress. These legal issues should be decided once and for all by this Court.

II. THE BOARD MAY NOT DECLINE JURISDICTION OVER UNION EMPLOYERS IN ALL CASES

The Board's principal counterattack against petitioner's arguments is based upon its position that all the statute commands is that union employers be treated the same as other employers—not differently, as “petitioner contends” (NLRB Brief, pp. 26-27). The Board asserts, relying upon the Court of Appeals holding below, that, “It [Sec. 2 (2)] simply puts labor organizations, viewed in relation to their own employees, in the broad category of employers; as the court below held, ‘it did no more than that’ (R. 264).” Further rounding out the Board argument is the attempt (NLRB Brief, p. 22) to place petitioner in the position of arguing that the Board is compelled, as a matter of law, to assert its jurisdiction over all union employers.

Petitioner wishes to make it explicitly clear that (1) petitioner is not arguing that the Board is compelled, as a matter of law, to assert its jurisdiction over union employers in all cases, and (2) petitioner is not contending that labor union employers be treated differently from other employers.

What petitioner is arguing is this: (1) the Board is compelled, as a matter of law, to not *decline* jurisdiction over union employers in all cases, and (2) to treat labor union employers the same as all other employers does not give the Board discretion to read

labor union employers out of the Act any more than it has discretion to read all employers out of the Act.

Petitioner has previously argued that the Board may not, as a matter of law, decline jurisdiction over union employers in all cases because Sec. 2 (2) specifically includes them, and because the legislative history demonstrates that Congress wanted unions held liable for unfair labor practices in dealing with their own employees. Petitioner believes the discretionary powers so jealously claimed by the Board flowing from the language of Sec. 10 (a) that the Board is "empowered," not directed, to prevent any person from engaging in any unfair labor practice, means that the Board might decline jurisdiction over labor union employer unfair labor practices in (1) particular cases involving particular circumstances where an assertion of jurisdiction might not effectuate the policies of the Act, and (2) situations where there was a meager effect on commerce (although petitioner is not willing to concede that such claimed Board discretion is as broad as the agency believes).

The Board, although not stating it flatly, apparently recognizes that if petitioner's position that the Board has read labor unions as employers out of the Act is correct, then indeed the NLRB action is contrary to law and must be reversed.¹ The Board attempts to

¹ The Board's recognition of the effect of this argument is shown (NLRB Brief, pp. 28-31) when it joins issue on the argument of petitioner that unions do not have employees engaged in commercial business. At p. 31, the Board brief states: "Accordingly, a Board decision not to assert jurisdiction over a labor organization acting as an employer in relation to persons hired to assist it in performing its functions as a union does not mean that the Board is declining to assert jurisdiction over labor-union employers as a class."

escape from this untenable position by continuing to maintain that it will take jurisdiction over unions as employers when they engage in commercial business, as contrasted to unions as employers in their trade union capacity, and therefore, the Board is not declining to assert jurisdiction over labor union employers as a class.

Petitioner, as it did in its main brief, (pp. 21-22) asserts again that labor unions do not have employees working for them in commercial enterprises. The Board brief, while stating that unions do engage in business (Br. 28), nevertheless retreated somewhat to the position: "Although it is rare that unions directly operate commercial businesses, it is undisputed that they exercise control—generally through stock ownership—over many kinds of incorporated businesses . . ." (Br. 29). The Board then implies that in such instances, it could look through the corporate veil to assess responsibility, or it could hold the union stockholders liable as agents of the employer, and thus reach the union as an employer.

Aside from the simple fact that employees of corporate business enterprises are ^{not} employees of the stockholders (whether these stockholders be labor unions, or members of labor unions, or Henry Ford, or the DuPont family, or anyone else), the Board argument has no meaning. It would not be necessary for the Board to hold labor union stockholders liable as agents of the corporate employer to remedy unfair labor practices. The corporate unfair labor practice, no matter who its stockholders were, could be wholly remedied by the simple expedient of entering an order directed against the corporation.

The Board cites instances in its brief (Br. 30) where it has reached corporate stockholders as agents of the employer when their conduct interfered with the rights guaranteed employees under the Act. Although there are such situations as cited by the Board, in the overwhelming majority of cases the Board does not direct its orders beyond the corporate entity; and while in some instances, directing orders beyond the corporate entity to an interfering stockholder might provide a more comprehensive remedy, the fact remains, nevertheless, that the unfair labor practice can always be remedied by an order directed at the corporate employer. This being so, it would never be necessary for the Board to hold union stockholders liable as agents of employers to remedy unfair labor practices. Consequently, the Board argument that it would hold unions as employers liable for unfair labor practices when they engage in commercial activities collapses as a meaningless array of words.

The amicus brief of the Teamsters unions jumped into the dispute over unions in commercial activities (pp. 97-99) and purported to list a number of examples of unions engaging in business. But outside of the union office building example, which is not a commercial business in the true sense of the word, since the unions involved are primarily using these buildings for housing purposes, neither the Teamsters nor the Board has come up with a genuine example of a union engaging directly in a commercial enterprise, maintaining a staff of employees directly on the union payroll.³ But even assuming that a rare and isolated

³ The Mine Workers and Seafarers examples at p. 98 of the Teamster brief show clearly the corporate nature of the business involved. Four examples of unions owning office buildings were

example could be found, which is doubtful, such direct engagement in commercial business would be *de minimus* with emphasis, and still would not defeat the principle maintained here.³

Therefore, in summary, to decline to assert jurisdiction over labor union employers in trade union functions is to decline jurisdiction over union employers as a class. The practical effect of this is to render the meaning of Sec. 2 (2) exactly the same as Sen. Wagner originally intended when he introduced his first labor bill. Congress rejected that approach, and amended the bill to include union employers. The NLRB has arbitrarily destroyed an enactment of Congress under its claimed discretion.

cited at p. 99, but counsel for petitioner is informed that in each and every instance, the union owner does no more than maintain its international headquarters there and rent excess space to other tenants, which is hardly engagement in a commercial enterprise. A further example was cited of the International Typographical Union publishing a daily newspaper, but in the absence of detailed factual proof, counsel does not believe this operation is maintained by the union directly, with the employees of the newspaper working directly on the union payroll. The same belief exists as to the example of the International Printing Pressmen owning and operating a hotel in Colorado Springs, Colorado.

³ Even if it could be shown that four or six or a dozen unions in 10,000 operated commercial businesses directly, which petitioner does not believe can be shown, such ought to properly come within the *de minimus* principle, thus rendering the Board's ultimate position meaningless. Petitioner does not profess to know how many labor unions there are in the United States, but this record reveals that the International Brotherhood of Teamsters alone has 872 chartered local unions. When such giants as the United Automobile Workers, the United Steel Workers, the Brotherhood of Carpenters, and others are considered, each having hundreds of chartered local unions, the total number of labor unions should easily exceed 10,000 and more.

III. THE POLICY ARGUMENTS OF THE TEAMSTERS ARE FICTIONAL AND ARTIFICIAL

The Board brief (pp. 38-39) hints that several policy issues considered by the NLRB during oral argument, although not reflected in the Board decision, suggest that no single view may be deemed the only reasonable one on the question whether it would effectuate the policies of the Act to assert jurisdiction. The Teamster amicus brief (Teamster brief, pp. 67-79) goes so far as to argue that some of the alleged problems supposedly created by union employers being compelled to obey the labor law are so great as to demonstrate that Congress intended the Act to apply only to the commercial activities of union employers. These policy issues, or so-called adverse effects, are largely fictional and artificial.

The principal contention raised by the Teamsters is that unions ought to be allowed to have loyal employees. "To require a union to retain in its employ as an organizer, negotiator, collector of dues, or receptionist one who is anti-union or pro-rival union can inflict untold harm on the union" (Teamster amicus brief, p. 72). In other words, the union employer ought to be allowed to discriminate against any employee who is not an "enthusiast" for its point of view. In answering these contentions, certain practical realities of union organizational life ought to be observed. The union negotiator is almost always a business agent, or an executive officer in the union, and most likely would have attained his position by coming up through the ranks of his own union—that is, the employer. As an executive officer of the union employer, he would be a part of management, i.e., the union employer, and of course, would not be a member.

of the union representing the rank and file of the employing union's employees. The rank and file employees of a labor union are almost always clericals, as they are in this case, and they would be subject to the same standards of loyalty as employees of any employer. This Court has recognized that "There is no more elemental cause for discharge of an employee than disloyalty to his employer," *NLRB v. Electrical Workers*, 346 U.S. 464, 472, and those standards would give any union employer adequate protection against being compelled to retain a disloyal employee.

The Teamster amicus brief attempts to draw a parallel between union employees and the so-called confidential employee that is usually excluded from bargaining units by the National Labor Relations Board⁴ (Teamster brief, p. 74). But the clericals in this case who assisted the union officers in formulating and executing labor union policies in the field of labor relations were assisting those union officers in their activities of bargaining for employees of outside employers. None of these clericals would be assisting Teamster executives in their formulation of labor policies toward the union employees. If the Teamster business agent who had the responsibility of bargaining with a clerical union for his office employees had a confidential secretary in his employ, then that particular secretary might be excluded from the bargaining unit as a confidential employee, just as the confidential secretary of an industrial plant manager would

⁴ *B. F. Goodrich Co.*, 1956, 115 NLRB 722, was cited for the well-recognized principle that confidential employees who assist management officials in formulating, determining and effectuating management policies in the field of labor relations are excluded from bargaining units.

not belong to the union. But here the parallel ends. Thus the comparison of ordinary union clericals with the confidential employees ordinarily excluded by the NLRB from bargaining units fails to demonstrate that there would be any problem at all involved.

The Teamster amicus brief also makes reference to an issue touched upon at oral argument before the NLRB (Teamster brief, p. 77), whether the competitive interests of an office employees union and a Teamster union in organizing other office workers would not be sufficient reason to decline jurisdiction over union employers as a matter of policy. While this is a variation of the loyalty theme, the same conditions that motivated the Board in declining to compel an employer to bargain in *Bausch & Lomb Optical Co.*, 108 NLRB 1555,⁵ are not present here. First of all, it is doubtful whether the interests of competing labor unions are entitled to the same protections that are accorded competing business enterprises. While our legal structure gives certain protections to commercial investments, property, and enterprise, the basic governing labor statute is not framed in terms of protecting union interests, but in terms of protecting interests of employees. In other words, the rights of employees to organize and bargain collectively are infinitely superior to the rights of any union as an institution to be free of competition.

Secondly and on an even more practical level, there is no reason why the Teamsters, a predatory union attempting to organize employees in all fields of en-

⁵ The Board took into account competitive interests in the business world when it refused to order *Bausch & Lomb* to bargain with a union whose members owned a controlling stock interest in a corporation engaging in a rival business.

deavor, should have their so-called interests afforded any special protection. Although not regulated in law, labor unions ought to have the maturity to define their own lines of jurisdiction and respect those areas. Petitioner is engaged in organizing office workers, not truck drivers, and any alleged competition with the Teamsters is purely a one-way street. The specter of competition between unions as a reason why employees should not be allowed to have protection of the law is a frivolous argument.

IV. THE TEAMSTER OPERATIONS HAVE A PROFOUND EFFECT UPON COMMERCE

One of the principal points of the Teamster amicus brief is that it was not established in this case that Teamster activities affected commerce, and therefore, there was no proper basis for the assertion of NLRB jurisdiction. Indeed, the Teamster brief attempts to show that the Board's decision was based almost entirely on "no effect on commerce," and chooses to relegate to a minor role the Board's finding that it would not effectuate the policies of the Act to assert jurisdiction.

As indicated in its main brief (p. 6), petitioner believes the only sound interpretation of the Board holding is that the decision was founded upon the conclusion that it would not effectuate the policies of the Act. It is interesting to note that the Board brief apparently agrees with petitioner's view, since it considers the policy question as controlling throughout and pays little or no attention to the Teamster position that the Board decided that no effect on commerce had been shown.

The Trial Examiner found that the Teamster organizations were integral parts of a multi-state enter-

prise (R. 94a-97a), and since the annual outflow of dues and initiation fees exceeded six million dollars, he found sufficient effect on commerce to warrant Board jurisdiction. The Board decision does not seriously controvert this finding in any way. The reference in the Board opinion to an effect on commerce not being established (R. 234a) is an isolated statement in the context of a decision wholly based on policy grounds. What the Board meant by saying that no effect on commerce had been established was that for policy reasons, it had considered that non-commercial activities of nonprofit organization did not affect commerce sufficiently to warrant exercise of Board jurisdiction. Certainly the Board could not have meant that the six million dollars of Teamster funds crossing state lines did not have an effect upon commerce within the strict statutory sense.

This interpretation of what the Board meant by its isolated statement that no effect on commerce had been established is bolstered by the Board's past treatment of these so-called nonprofit, non-commercial organizations. As the Board brief pointed out (Br. 35, f.n. 33), the NLRB, on several occasions prior to 1947, had asserted its jurisdiction over nonprofit organizations when their interstate transactions were substantial. In *NLRB v. Central Dispensary & Emergency Hospital*, 145 F. 2d 852 (C.A.D.C., 1944), it was held that the sale of services for a fee was trade and commerce. But more important, in the Board's first basic decision on non-assertion of jurisdiction over so-called nonprofit, non-commercial organizations, *Trustees of Columbia University*, 97 NLRB 424, it found that the organization's activities "affect commerce sufficiently to satisfy the requirements of the statute

and the standards established by the Board for the normal exercise of its jurisdiction”

Union dues, or per capita taxes, are ostensibly rendered to the parent international organization for services to be performed for the benefit of the membership. In this manner, they have a profound effect upon the stream of commerce.

One other point in the Teamster brief needs comment. The Teamster amicus brief assumes (pp. 31-37) that the General Counsel was compelled to show that the Teamster unions represented employees of employers engaged in commerce in order to establish NLRB jurisdiction. This argument overlooks that the General Counsel proceeded here against the Teamsters as employers, and jurisdiction could be established on that basis alone. The basis for jurisdiction over unfair labor practices of labor organizations under Sec. 8 (b) of the Labor Act has no bearing in this case, since the Teamsters unions were proceeded against under Sec. 8 (a), the employer unfair labor practice portion of the Act.

CONCLUSION

For all the reasons heretofore presented, it is respectfully submitted that the decision of the Court of Appeals should be reversed and the case should be remanded to the National Labor Relations Board with directions for it to assume jurisdiction.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO.
11, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD
IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. App. A, R. 261a-265a) is not yet reported. The decision and order of the Board is reported at 113 NLRB 987 (R. 229a-247a).

JURISDICTION

The judgment of the court below (R. 261a-265a) was entered on June 21, 1956. The petition for a writ of certiorari was filed on September 14, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the court below erred in holding that the Board may properly decline to assert its plenary jurisdiction over labor organizations acting as employers.

2. Whether the court below erred in holding that the Board did not abuse its discretion in applying to labor organizations acting as employers the same standards for assertion of jurisdiction which it applies to other non-profit, non-commercial employers.

STATUTE INVOLVED

The pertinent provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), is set forth at page 2 of the Petition.

STATEMENT**I. THE BOARD'S FINDINGS AND CONCLUSIONS RESULTING IN DISMISSAL OF THE COMPLAINT¹**

Upon charges filed by petitioner, a labor organization seeking to represent certain office-clerical employees employed in Portland, Oregon, by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and various locals, agents, and divisions of that union, collectively referred to herein as the Teamster organizations, the General Counsel of the Board issued complaints alleging that the Teamster organizations, acting in their capacity as employers of these employees, had

¹ Since the subsidiary findings of fact are not in dispute, record references herein are to the findings set forth in the Board's decision and in the trial examiner's intermediate report.

engaged in unfair labor practices in violation of Section 8 (a) (1), (2), (3), (4) and (5) of the Act (R. 81a-84a).² Following a hearing on these consolidated cases, a trial examiner of the Board issued his intermediate report finding, so far as here pertinent, that the Teamster organizations were each employers within the meaning of the Act, that they were engaged in commerce and that it would effectuate the policies of the Act for the Board to assert jurisdiction over them (R. 89a-98a, 185a-186a). In finding that it would effectuate the policies of the Act to assert jurisdiction over the Teamster organizations, the trial examiner treated all of them except the Security Plan Office as integral parts of a multi-state enterprise consisting of the International and all its affiliates (R. 94a-97a). He found that the annual flow of initiation fees and per capita taxes from all over the country, including the State of Oregon, to the national headquarters of the International in Washington, D. C., was over \$6,000,000, more than sufficient to meet the Board's applicable minimum requirements (\$250,000) for asserting jurisdiction over a multi-state enterprise (R. 85a-86a, 90a, 94a).

² The Teamster organizations, in addition to the International, consist of Joint Council of Drivers No. 37, composed of 23 Teamster locals; Locals 206 and 223, affiliated with the International; Teamsters Building Association, Inc., an Oregon corporation set up by six Teamster locals for the purpose of providing office space for themselves and the Oregon Teamsters' Security Plan Office; and Oregon Teamsters' Security Plan Office, also known as Teamsters Security Administration Fund, which administers 18 trust funds established pursuant to collective bargaining agreements between the locals comprising the Joint Council and some 2000 employers (R. 85a-89a).

In asserting jurisdiction over the Security Plan Office, he relied upon the fact that from its office in Portland, Oregon, it remitted to an insurance company in California policy premiums in excess of \$2,000,000 annually, which was more than sufficient to meet the minimum outflow requirement (\$50,000) applicable under the Board's standards for industrial enterprises (R. 97a-98a).

The Board agreed with the trial examiner that the Teamster organizations, in relation to their office-clerical employees here involved, were employers within the meaning of Section 2 (2) of the Act which excludes a labor organization from the definition of employer "other than when acting as an employer" (R. 232a). It held, however, that "the mere inclusion of labor unions in the statutory definition of 'employer' does not constitute a legislative ukase that, in all instances, their operations affect commerce and the assertion of the Board's jurisdiction over unions will effectuate the policies of the Act" (R. 233a). It held further that "the limited inclusion of labor organizations in the Act's definition of an 'employer' [is] consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine whether the operations of a union-employer, like any other employer, affect commerce within the meaning of the Statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act" (*ibid.*).

The Board found that in this case it would not effect-

tuates the policies of the Act to assert jurisdiction over the Teamster organizations (R. 230a). It noted that all of the Teamster organizations are non-profit organizations (R. 233a). Each exists and operates for the benefit of members of the Teamster unions and other employees in bargaining units which the Teamsters represent. The basic aim of the International, the Joint Council and the locals is to improve the working conditions of the workers, increase their job security and otherwise promote their general welfare. The Security Plan Office is a fiduciary engaged essentially in administering trust funds established by collective bargaining agreements with various employers, a typical labor union function in furtherance of employee welfare. The other Teamster organization, the Building Association, is only an instrumentality of 6 Teamster locals, none of which participates in any commercial transactions (R. 233a-234a).

The Board pointed out further that, with Congressional approval, it asserts jurisdiction over other non-profit employers "only in exceptional circumstances and in connection with purely commercial activities of such organizations" (R. 234a).¹ It held that the Teamster organizations' activities "directed to advancement of employee interests are, obviously, not substantial engagement in a commercial venture within the contemplation of the Board's jurisdictional principles for non-profit employers" (R. 234a). Applying the jurisdictional criteria which it had theretofore been applying to other non-profit employers, the Board accordingly declined to assert jurisdiction over these

¹ House Conference Report No. 510, 80th Cong., 1st Sess., 32 (1947).

union employers and dismissed the complaints (R. 235a). In doing so, the Board expressly overruled its ruling in a prior case (*Air Line Pilots Association*, 97 NLRB 929) in which it had asserted jurisdiction in a representation proceeding involving a union and its employees (R. 234a, n. 7).⁴

II. THE OPINION OF THE COURT BELOW

The court below, with Judge Bazelon dissenting, sustained the Board's dismissal of the complaints. It rejected petitioner's contention that Section 2 (2) of the Act by providing, in pertinent part, that "The term 'employer' * * * shall not include * * * any labor organization (other than when acting as an employer)" required the Board to exercise its plenary jurisdiction over labor organizations acting as employers. It agreed with the Board "that Section 2 (2) of the Act placed labor organizations in precisely the same status under the Act as are all other employers" (R. 262a-264a).

The court below held further that the Board's conclusions with reference to the non-profit character of the Teamster organizations, the reasoning with which

⁴Two Board members, dissenting, were of the view that the Board should assert jurisdiction over the Teamster organizations as integral parts of a multi-state enterprise, the standard applied by the Board in the *Air Line Pilots* case and by the trial examiner in this case (R. 239a-247a). A third Board member joined in the dismissal of the complaints because, in his view, Congress did not intend to include labor organizations within the meaning of employer when in relation to their own employees they are engaged, as in this case, solely in performing their functions as a labor organization (R. 236a-239a).

it supported its criteria for asserting jurisdiction and the applicability of those criteria to the Teamster organizations are rational and not arbitrary or capricious. It accordingly sustained the Board's exercise of its administrative discretion not to assert jurisdiction in this case (R. 264a).

ARGUMENT

1. The principal issue which petitioner presents is whether the Board is authorized under the Act to decline to exercise its plenary jurisdiction over labor organizations acting as employers. This Court has recognized—and petitioner, of course, does not dispute—that with respect to employers generally the Board may, in its administrative discretion, decline to assert its jurisdiction even though it is empowered by the statute to assert it. *National Labor Relations Board v. Denver Bldg. & Construction Trades Council*, 341 U. S. 675, 684; *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U. S. 9, 19. Petitioner contends, however, (Pet. 13-18) that with respect to unions acting as employers, the Board has no such discretion because of the statutory policy expressed in Section 2 (2) of the Act which defines the term “employer” and the legislative history of that section.

Section 2 (2) of the statute, in providing that “The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include * * * any labor organization (other than when acting as an employer),” puts labor organiza-

tions in the category of employers as to their own employees but, as the court below held, "it did no more than that" (R. 264a). The legislative history of that section shows no intention to treat union employers differently from other employers. Indeed, if anything, it shows that Congress intended that they be treated the same. In addition to the legislative history recited by petitioner (Pet. 14-17), see Hearings before the Committee on Education and Labor, United States Senate, 73rd Cong., 2d Sess., on S. 2926. *Legislative History of the National Labor Relations Act, 1935*, p. 720.* Accordingly, we believe the Board and the court below were correct in holding that neither the statute nor its legislative history supports petitioner's contention that the Board must exercise juris-

* Thus during the course of the legislative hearings, Leslie Vickers, testifying on behalf of the American Transit Association before the Senate Labor Committee, urged that "the same restrictions put upon management should also be put upon labor organizations" and opposed as "unfair" the proposed blanket exclusion of labor organizations from the definition of employer. He stated that "the history of labor organizations becoming rich and powerful and entering into business is too recent to disregard in connection with this subject" and that "Under the exclusion as now contained in the bill it is entirely conceivable that labor organizations in themselves will displace industrial organizations." *Leg. Hist. (1935)* p. 720. Similarly, Dr. Gus W. Dyer, professor of economics, Vanderbilt University, told the Committee that because "Labor organizations may employ an unlimited number of workers to engage in all sorts of business activities," there was no reason to treat union employers differently than other employers (*ibid.*, at p. 940). When Congress inserted the parenthetical words "other than when acting as an employer" after the language excluding labor organizations from the definition of employer, it was apparently acting in response to critics who argued that union employers should be treated the same as other employers, not differently, as petitioner contends.

diction over union employers in all cases in which it is legally empowered to act.*

2. Petitioner further asserts (Pet. 18-20) that even if the Board may exercise its discretion in declining to assert jurisdiction over unions as employers, it acted arbitrarily in applying to unions the same administrative jurisdictional standards which it applies to other types of non-profit employers. More specifically, petitioner asserts (Pet. 19) that the legislative history of Section 2 (2) demonstrates that Congress merely approved "the Board's policy of not taking jurisdiction over religious, charitable, scientific, literary, or educational organizations, not 'non-profit' groups as a whole" and that, therefore, there is no warrant for the Board's treatment of union employers, for jurisdictional purposes, on the same basis as it treats the non-profit organizations specifically mentioned in the legislative history.

* Petitioner suggests (Pet. 7, p. 10) that unions seldom, if ever, engage in commercial enterprises and that the practical effect of the Board's declination of jurisdiction in cases where unions are charged with engaging in unfair labor practices with respect to their employees who assist them in their organizational and representation functions is to decline jurisdiction over all union employers. This contention does not accord with the testimony of the witnesses who appeared at the legislative hearings, as shown above. Moreover, as various business and other publications have noted, unions engage in many types of businesses such as banking, insurance, newspaper publishing, house developments, laundries, cigar making, clothing manufacturing, shoemaking, and the sale of sundry supplies to United States merchant ships. *Nation's Business*, July 1955, pp. 46, 49-50; *Business Week*, January 1, 1955, p. 56; Peterson's *American Labor Unions*. (N. Y. London, 1945), Millis and Montgomery, *Organized Labor*, 1945, pp. 344-352. And see *Bausch & Lomb Optical Co.*, 108 N. L. R. B. 1555; *Otter Trawlers Union, Local 52*, 100 N. L. R. B. 1187; *Intermediate Report on Guayama Bakers*, 27 L. R. R. M. 1322, 1323.

The Conference Report to which petitioner refers (Pet. 18) points out that Section 2 (2) specifically excludes only one type of nonprofit organization from the definition of employer and that the other six-non-profit organizations which the House bill would have excluded were not specifically excluded in the final version of the Section because of the Board's policy of declining to assert jurisdiction over them save "only in exceptional circumstances and in connection with purely commercial activities." When the 1947 amendments were adopted, the Board had not had occasion to pass on the question whether it should assert jurisdiction over other types of non-profit organizations not specifically mentioned in the legislative history such as, among others, union employers. It would seem clear, however, that Congress was not purporting to make a comprehensive and exclusive listing of all non-profit organizations over which the Board might properly decline to assert jurisdiction because of that factor. Necessarily, Congress left that task to the Board, noting at the same time, for the Board's guidance in the future, its general approval of the Board's abstention from exercising jurisdiction over nonprofit employers save in the exceptional circumstances noted above. Accordingly, since the Teamster organizations are non-profit employers and are not engaged in any commercial venture in this case, the Board could appropriately treat them as it would any other non-profit, non-commercial employer in deciding whether to assert its jurisdiction.

3. As petitioner recognizes (Pet. 20), there are no contrary decisions. Moreover, the issue does not appear, at the present time, to be of substantial importance in the administration of the Act, warranting review by this Court. This is the first case to be decided by the Board during its entire history in which labor organizations have been charged with committing unfair labor practices as employers of their own employees.⁷

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1956.

⁷ In one other case, *Otter Trawlers Union, Local 53*, 100 N. L. R. B. 1187, the Board found that a union as agent of owners of fishing vessels was a statutory employer of employees of those owners and that it had engaged in unfair labor practices in violation of Section 8 (a) (1), (2) and (3) of the Act. There, however, the Board asserted jurisdiction on the basis of the effect on commerce of the fishing business of the vessel owners.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No.
11, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 261-265) is reported at 235 F. 2d 832. The decision and order of the Board is reported at 113 NLRB 987 (R. 229a-247a).

JURISDICTION

The judgment of the court below (R. 261-265) was entered on June 21, 1956. The petition for a writ of certiorari was filed on September 14, 1956, and was granted on November 13, 1956. (352 U. S. 906.) The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

(1)

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board must assert jurisdiction over labor organizations acting as employers.

2. Assuming a negative answer to Question 1, whether the Board, for purposes of exercising its jurisdiction, may apply to labor organizations, acting as employers in the course of their normal union functions, the administrative standards which the Board has adopted for other nonprofit employers.¹

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the appendix, *infra*, pp. 43-44.

STATEMENT

I. THE BOARD'S FINDINGS AND CONCLUSIONS RESULTING IN DISMISSAL OF THE COMPLAINT

A. PRELIMINARY STATEMENT²

This case arose out of the competitive attempts of two labor organizations, both formerly affiliated with the American Federation of Labor and now both affiliated with the American Federation of Labor-Congress of Industrial Organizations, to represent the employees of one of them. Petitioner, one of those labor organizations, was seeking to represent some 23 office-clerical employees in the Teamsters Building

¹ As set forth *infra*, pp. 15-16, the Court might conclude, in view of the posture of this case when decided by the Board, that the questions raised are not ripe for review.

² Since the subsidiary findings of fact are not in dispute, record references herein are to the findings set forth in the Board's decision and in the trial examiner's intermediate report.

in Portland, Oregon, employed by various locals, agents, and instrumentalities of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The International and these various entities and their agents are collectively referred to herein as the Teamster organizations (R. 99a).³ Upon charges filed by petitioner, the General Counsel of the Board issued complaints alleging that the Teamster organizations, acting in their capacity as employers of these office-clerical employees, had engaged in unfair labor practices in violation of Section 8 (a) (1), (2), (3), (4) and (5) of the Act (R. 81a-84). Following a hearing on these consolidated cases, a trial examiner of the Board issued his intermediate report finding that the Teamster organizations were employers within the meaning of the Act, that they were engaged in commerce, that it would effectuate the policies of the Act to assert jurisdiction over them, and that they had engaged in unfair labor practices in some of the respects alleged in the complaints (R. 89a-188a). The Board, with two members dissenting, dismissed the complaints without considering the merits of the charges (R. 229a-247a).

The pertinent facts relative to the nature and operations of the Teamster organizations are not in dispute. They are set forth in detail in the trial examiner's intermediate report (R. 85a-93a) and are briefly summarized below.

³ The Teamster organizations, in addition to the International and its agent, John J. Sweeney, consist of Joint Council of Drivers No. 37; Locals 206 and 223, affiliated with the International; Teamsters Building Association, Inc.; and Oregon Teamsters' Security Plan Office (also known as Teamsters Security Administration Fund), and its administrator, William C. Earhart.

B. NATURE AND OPERATIONS OF THE TEAMSTER ORGANIZATIONS AS EMPLOYERS

1. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, herein called the International, is a national labor organization having 872 chartered locals in the United States, Alaska, Hawaii, Canada and the Canal Zone, including two involved in this proceeding (R. 85a-86a). The annual flow of initiation fees and per capita taxes from its constituent locals all over the country, including these in the State of Oregon, to its national headquarters in Washington, D. C., is over \$6,000,000 (R. 86a). The International has desk or office space in the Teamsters Building in Portland, Oregon, where the employees here involved worked. Through its control of the locals, as described fully in the intermediate report (R. 90a-93a), it was in a position to exercise control, at least indirectly, over the office-clerical employees and to interfere with their organizational rights. The complaint alleged that it did so through its general organizer, John J. Sweeney (R. 52a-53a).

2. *Local 206* is affiliated with the International. During the year ending June 30, 1954, it collected \$156,839 in dues, reinstatement and application fees and fines from its members in Oregon and remitted to the International per capita taxes in the amount of \$46,786 (R. 86a). It employs two of the office-clerical employees working in the Teamsters Building (R. 162a).

3. *Local 223*, also affiliated with the International, has no constitution or by-laws of its own but operates

under the International's constitution (R. 90a). During the year ending June 30, 1954, it collected \$32,468 in dues, reinstatement and application fees and fines from its members in Oregon and remitted to the International per capita taxes in the amount of \$7,258 (R. 86a). It shares an office employee with three other locals having their offices in the Teamsters Building (R. 163a).

4. *Joint Council of Drivers, No. 37* is comprised of 23 Teamster locals, 21 in the State of Oregon and two in the State of Washington. It was established pursuant to, and operates under, the constitution of the International. Its income consists of per capita taxes paid by its constituent locals, and for the year ending June 30, 1954, it received \$177,645 from this source, \$8,609 of which came from locals outside the State of Oregon (R. 86a). The Joint Council employs several of the office-clerical employees who work in the Teamsters Building (R. 130a).

5. *Teamsters Building Association, Inc.*, is a non-profit Oregon corporation in which the stock is fully owned by six Teamster locals, including Local 206. Its only function is to own and operate the Teamsters Building in Portland, which is entirely occupied by Teamster organizations, including those here involved (R. 86a-87a, 231a). So far as the record shows, the corporation's purchases and income are entirely intra-state (R. 87a). It employs one full-time employee, a telephone operator on the building switchboard, and a part-time bookkeeper who is also employed by the Joint Council (R. 112a, 129-130a).

6. *Oregon Teamsters' Security Plan Office*, also known as *Teamsters Security Administration Fund*, and herein called the Security Plan Office, is an organization consisting, at the time of the hearing in this case, of an administrator, William C. Earhart (one of the respondents before the Board), and a staff of office and clerical employees. (R. 89a, 203a-231a). With the aid of this staff, Earhart administers 18 trust funds established by collective bargaining agreements between various Teamster locals comprising the Joint Council and some 2000 employers. These employers are located primarily in Oregon, though a few of them are in Washington, Idaho, and Montana. The administrator is appointed by the trustees, half of whom are designated by the Teamster locals and the others by the interested employers. With contributions furnished by the employers, the administrator purchases health and welfare insurance policies from an insurance company in California for the employee-beneficiaries of the trusts (R. 87a-88a, 231a). The premiums remitted by the administrator to the insurance company in California are in excess of \$2,000,000 a year. The insurance company, in turn, remits four percent of the amount of these premiums back to the Security Plan Office in Portland, Oregon, for the purpose of defraying office expenses and processing and paying claims under the health and welfare plans (R. 88a). During the period pertinent here, Security Plan Office employed five to ten of the Teamster Building office personnel (R. 101a).

C. CONCLUSIONS OF THE TRIAL EXAMINER

The trial examiner concluded, on the basis of the above facts, that each of the Teamster organizations was an employer within the meaning of Section 2 (2) of the Act in relation to its own employees (R. 85a-86a). He found that all of the organizations were engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction over them. He treated all of the organizations, except Security Plan Office, as integral parts of a multi-state enterprise consisting of the International and all of its locals and their constituent entities (R. 94a-97a). He found that the annual outflow of initiation fees and per capita taxes from its affiliates to the International's headquarters in Washington, D. C. (over \$6,000,000) was more than sufficient to meet the Board's applicable minimum requirement (\$250,000) for asserting jurisdiction over non-retail multi-state enterprises, as established by the Board in *Jonesboro Grain Drying Cooperative*, 110 NLRB 481 (R. 89a-97a). In asserting jurisdiction over the Security Plan Office, the trial examiner relied upon the fact that it remitted to an insurance company in California insurance policy premiums in excess of \$2,000,000 annually, an amount more than sufficient to meet the minimum outflow requirement applicable under the Board's standards for industrial enterprises (\$50,000) as set forth in the *Joneboro* decision (R. 97a-98a).

**D. CONCLUSION OF THE BOARD MEMBERS RESULTING IN DISMISSAL
OF THE COMPLAINTS**

Four of the five Board members agreed with the trial examiner that each of the Teamsters organizations was an employer within the meaning of Section 2 (2) of the Act (R. 231a-232a, 242a-243a). They divided two-two, however, on the question whether it would effectuate the policies of the Act to assert jurisdiction over these employers. The fifth Board member, Mr. Murdock, was of the view that the Teamster organizations were not employers within the meaning of Section 2 (2) of the Act, and for this reason he joined with Chairman Farmer and Member Peterson—the two who voted to decline jurisdiction for policy reasons—in dismissing the complaints.

We set forth below the bases for the three opinions of the Board members:

1. *The Farmer-Peterson opinion*—Chairman Farmer and Member Peterson held that “the mere inclusion of labor unions in the statutory definition of ‘employer’ does not constitute a legislative ukase that, in all instances, their operations affect commerce and that assertion of the Board’s jurisdiction over unions will effectuate the policies of the Act” (R. 233a). In their view, “the limited inclusion of labor organizations in the Act’s definition of an ‘employer’ [is] consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine whether the operations

of a union-employer, like any other employer, affect commerce within the meaning of the Statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act" (*ibid.*).

In finding that it would not effectuate the policies of the Act to assert jurisdiction in this case, they applied the standards which the Board had theretofore established for nonprofit organizations. They noted that all of the Teamster organizations are nonprofit organizations (R. 233a). Each exists and operates for the benefit of members of the Teamster unions and other employees in bargaining units which the Teamsters represent. The basic aim of the International, the Joint Council and the locals is to improve the working conditions of the workers, increase their job security and otherwise promote their general welfare. The Security Plan Office is a fiduciary engaged essentially in administering trust funds established by collective bargaining agreements with various employers, a typical labor union function related to employee welfare. The other Teamster organization, the Building Association, is only an instrumentality of six Teamster locals, none of which participates in any commercial transactions (R. 233a-234a).

The Farmer-Peterson opinion pointed out further that, with legislative approval, the Board asserts jurisdiction over other nonprofit employers "only in exceptional circumstances and in connection with purely commercial activities of such organizations"

(R. 234a).⁴ It stated that the Teamster organizations' activities "directed to advancement of employee interests are, obviously, not substantial engagement in a commercial venture within the contemplation of the Board's jurisdictional principles for nonprofit employers" (R. 234a). Applying the jurisdictional criteria which the Board had theretofore been applying to other nonprofit employers, these Board members accordingly declined to assert jurisdiction over the Teamster organizations (R. 235a).

2. *The Leedom-Rodgers opinion*—Two other Board members, Leedom (now Chairman) and Rodgers, in a dissenting opinion, stated that they would affirm the trial examiner and assert jurisdiction over all of the Teamster organizations (R. 246a). They stated also that, even applying the nonprofit, noncommercial test relied on by the Farmer-Peterson opinion, they would, at the least, assert jurisdiction over Security Plan Office, on the grounds that it "performs functions ordinarily associated with insurance brokers and underwriters" and that the Board asserts jurisdiction over fraternal insurance operations (R. 239a-247a).

3. *The Murdock opinion*—Board Member Murdock was of the opinion that Congress did not intend to treat labor organizations as employers, for purposes of the Section 8 (a) provisions of the Act,

⁴ House Conference Report No. 510, 80th Cong., 1st Sess., p. 32 (1947) (1 Leg. Hist. (1947) 536). "Leg. Hts. (1947)" refers to the two-volume collection of the legislative history of the Taft-Hartley Act, entitled "Legislative History of the Labor-Management Relations Act, 1947." The two similar volumes for the original Wagner Act are referred to as "Leg. Hist. (1935)."

when they are engaged, as in this case, solely in performing their functions as labor organizations (R. 236a-238a). Accordingly, he concurred in the dismissal of the complaints.

II. THE OPINION OF THE COURT BELOW

The court below, with Judge Bazelon dissenting, sustained the Board's dismissal of the complaints. It rejected petitioner's contention that Section 2 (2) of the Act—providing, in pertinent part, that "The term 'employer' * * * shall not include * * * any labor organization (other than when acting as an employer)"—required the Board to exercise its plenary jurisdiction over labor organizations acting as employers. It agreed with the Board "that Section 2 (2) of the Act placed labor organizations in precisely the same status under the Act as are all other employers," and concluded that, for purposes of the Board's discretionary exercise of its legal jurisdiction, Congress "put labor organizations in the category of employers as to their own employees, but it did no more than that" (R. 263-264).

The court below held further: "The conclusions of the Board with reference to the nonprofit character of these labor organizations, the reasoning with which it supported its criteria for asserting jurisdiction and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious." Accordingly, it ruled that the action of the Board "fell within the broad discretion which seems to be established as applicable to the Board's action in entertaining complaints" (R. 263, 264).

Judge Bazelon, dissenting, stated that "Section 2 (2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees. Hence I think the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction" (R. 265).

SUMMARY OF ARGUMENT

For the reasons stated in point I, we agree with petitioner's assumption that the Board has jurisdiction over labor unions acting as employers. We brief the issues raised by petitioner—whether the Board may decline to assert such jurisdiction and, if so, whether there was rational basis for doing so here—on the assumption that these issues may be reached. We point out, however, that the Court may deem it inappropriate to reach them since the Board's decision to dismiss the employees' complaints in this case resulted from a coalition of three members (a bare majority), one of whom thought that the Board lacked power and two of whom believed that jurisdiction existed but should not be asserted as a matter of policy.

I. A labor union, viewed in relation to its own employees, is an employer under Section 2 (2) of the Act and subject, as such, to the Board's jurisdiction. Neither the section itself nor its legislative history supports the view that Congress meant to include labor organizations within the definition of employer only when they are engaging in a commercial enterprise.

Section 2 (2), insofar as it refers to labor organizations, is identical with the same section of the Wagner Act and the corresponding provision of the proposed final version of the 1934 Wagner bill, S. 2926. And the 1934 Senate Labor Committee Report, in explaining the insertion of the parenthetical words "other than when acting as an employer," expressly referred to "clerks, secretaries, and the like" as examples of employees typically hired by labor unions. The Committee further stated that "[i]n its relation with its own employees, a labor organization ought to be treated as an employer and the bill so provides" (1 Leg. Hist. (1935) 1102).

H. The Act does not, however, require the Board to assert its jurisdiction over labor organizations acting as employers. The Board is vested with exclusive primary jurisdiction to protect the public rights which the Act creates and to give effect to the declared public policy of the statute. To that end, it is "empowered," not directed, to issue complaints and also "empowered," but not directed, to prevent any person from engaging in proscribed unfair labor practices. Section 10, *infra*, p. 43. As this Court has recognized, "unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns." *United States v. Morton Salt Co.*, 338 U. S. 632, 647-648. Thus, it has been the position of the Board that it should not seek to exercise its jurisdiction to the fullest extent possible, and that it may best perform its functions by limiting itself to those

cases in which the actual or potential impact upon commerce is pronounced.

Section 2 (2) of the Act does not qualify the Board's permissive authority under Section 10 nor require the Board to exercise its jurisdiction over labor organizations when they act as employers. The section merely defines the term "employer" as used in the Act, and there is no basis either in the statutory language or its legislative history for concluding that, for purposes of the Board's assertion of jurisdiction, labor organizations as employers are to be treated differently from other employers.

III. The Board, in the exercise of its discretion, may apply to labor organizations, acting as employers in the performance of their traditional functions, the same administrative standards for assertion of jurisdiction which it applies to other nonprofit, noncommercial enterprises. With congressional approval, the Board has followed a policy of declining jurisdiction over nonprofit organizations which are not substantially engaged in activities considered commercial in the generally accepted sense, even though the business of such organizations affects commerce sufficiently to satisfy the requirements of the Act. The application of this policy to the labor organizations in this case is neither arbitrary nor unreasonable. None of these organizations is engaged in a business or conducts a commercial enterprise in the ordinary sense; the basic purpose of each is to provide benefits for their members and to advance the cause of employees generally. In these circumstances, the Board may appropriately treat them, for jurisdictional pur-

poses, as it treats other nonprofit, noncommercial employers.

ARGUMENT

INTRODUCTION

Petitioner's brief develops two main theses. The first is that the Board has no discretion to refrain from exercising its jurisdiction over labor organizations acting as employers. The second is that the Board, in this case, has abused any discretion which it may have. Both of these arguments proceed, of course, upon the supposition that the Board has jurisdiction or power over a labor union acting in the capacity of an employer. We agree with petitioner (as we did in the court below) that this threshold assumption is a valid one. Nonetheless, we deem it appropriate to brief this point (point I, *infra*), since it is a jurisdictional one and basic to the entire controversy. We also note that one member of the Board, Member Murdock, was of the view that a labor-union employer is subject to the Act only when it is engaged in nonunion functions.

There is a second preliminary consideration. As noted above, the four members of the Board who assumed that the Board had jurisdiction were divided on the question whether jurisdiction should be asserted as a matter of policy. The complaints were dismissed because Member Murdock, who thought that the Board lacked power, joined with the two members (Chairman Farmer and Member Peterson)* who were not disposed to assert a jurisdiction which they be-

* Neither Mr. Farmer nor Mr. Peterson is currently a member of the Board.

lieved to exist. The result is that four members divided on a question which they deemed to be one of discretion, and that the decisive vote was cast by a member who did not address himself to the matter of discretion because he was of the view that there was no room for its exercise. If the Court should conclude that the Board has power over labor unions acting as employers, it might also decide that the appropriate course would be to remand this case to the Board without consideration of the issues briefed by petitioner. It might decide, in other words, that the Court need not consider whether the Board may properly decline, in a particular case, to assert its jurisdiction over a labor-union employer unless and until a majority of the Board, proceeding from a correct and common premise, decides to decline. If this Court should hold that the Board has jurisdiction (which both petitioner and the Government believe to be the case) and should remand to the Board, it cannot be predicted that the Board would decline to assert jurisdiction.*

While we recognize that, for the reasons just stated, the Court may not reach the points argued by petitioner, we do state, under points II and III *infra*, our answers to these contentions:

*Only two members of the Board, as now constituted, have passed upon the policy question.

A LABOR UNION, VIEWED IN RELATION TO ITS OWN EMPLOYEES, IS AN EMPLOYER UNDER THE ACT AND SUBJECT AS SUCH TO THE BOARD'S JURISDICTION

Section 2 (2) of the Act provides in relevant part that "[t]he term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include * * * any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization." For purposes of determining whether labor organizations are employers, this language, on its face, provides no basis for distinguishing between a labor union performing its normal union functions and one engaged in some non-union or commercial activity.⁷

Moreover, in our view, the legislative history of the section will not warrant such a distinction. Section 2 (2) of the present Act, insofar as it refers to labor organizations, is identical with the same section of the Wagner Act and with the corresponding provision of the proposed final version of the original 1934 Wagner Bill, S. 2926.⁸ In the first version of the 1934 bill, labor organizations were specifically excluded from the definition of employer.⁹ In the hearings on that bill before the Senate Committee on Education and Labor,

⁷ As stated above, Member Murdock was of the view that a union is to be treated as an employer only when the employment relates to performance of a non-union function.

⁸ See Senate Report No. 1184 on S. 2926, 73rd Cong., 2d Sess., p. 4, 1 Leg. Hist. (1935) 1102.

⁹ 1 Leg. Hist. (1935) 2.

a number of witnesses criticized the exclusion of unions from the definition of employer, stating that it was unfair to treat unions, when acting as employers of their own employees, differently from other employers.¹⁰ Although two of the critics, in voicing their objections, referred to the fact that unions enter into all sorts of businesses,¹¹ none of the critics indicated any desire to include labor organizations within the definition of employer only when they engage in commercial ventures. And the 1934 Senate Labor Committee Report, in explaining the insertion of the parenthetical words "(other than when acting as an employer)" after the language excluding labor organizations from the definition of employer in the final version of the bill, stated:¹²

The reason for stating that "employer" excludes "any labor organization, other than when acting as an employer" is this: *In one sense every labor organization is an employer, it hires clerks, secretaries, and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides.* But in relation to other employees it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization. [Emphasis added.]

Congress did not act upon the 1934 bill. In 1935, a new bill, S. 1958, was introduced by Senator Wagner.

¹⁰ 1 Leg. Hist. (1935) 494, 689-690, 720, 790-791, 940, 989, 2 Leg. Hist. (1935) 1990.

¹¹ Leg. Hist. (1935) 720, 940.

¹² Senate Report No. 1184, 73rd Cong., 2d Sess., May 26, 1934, accompanying S. 2926, p. 4 (1 Leg. Hist. (1935) 1102).

It again contained a blanket exclusion of labor organizations from the definition of employer, omitting the parenthetical language proposed by the Senate Labor Committee in 1934. That language, however, was restored by the Committee in the new bill as reported by it and was retained without change in the bill which was finally enacted in 1935, as well as in the 1947 amendments. Explaining the restoration of this language in the bill, the Senate Committee Report on S. 1958 stated:¹³

The term "employer" excludes labor organizations, their officers, and agents (except in the extreme case when they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions.

Board Member Murdock construed the above language from the Senate Committee Report to mean that "Congress did not intend either in the Wagner Act or the Taft-Hartley Act, to regulate relations between unions and such employees as they utilize in their normal collective bargaining activities" (R. 236a). In his view, the exclusion of unions from the definition of employer except, as the Report stated, "in the extreme case when they are acting as employers in relation to their own employees," must mean that unions are not to be treated as employers when employing help merely to carry out their col-

¹³ Senate Report No. 573, 74th Cong., 1st Sess., May 2, 1935, accompanying S. 1958 (2 Leg. Hist. (1935) 2305).

lective bargaining functions. Practically all unions, he reasoned, employ some office or clerical help, organizers and bargaining agents, and these situations cannot be considered the "extreme case[s]" Congress had in mind. Extreme cases exist, Mr. Murdock stated, only "where unions have departed from their traditional role and embarked on commercial enterprises—banks for example—where they have employees in the same context as any other industrial employer" (R. 238a). Mr. Murdock also stated that he was fortified in this view by the fact that the Wagner Act was intended to regulate employers in the interest of employees and unions, not to regulate unions as well, and that the Taft-Hartley Act left intact that portion of Section 2 (2) here in issue and accomplished its purpose to regulate unions by adding Section 8 (b) to the Act (*ibid.*).

But it cannot be overlooked that the history of Section 2 (2) goes back to the 1934 Wagner Bill which, like the 1935 bill, was amended to exclude from the definition of employer "any labor organization (other than when acting as an employer)."¹⁴ That legislative history contradicts the notion that unions were to be considered as employers only when engaging in some commercial venture. The Senate Report on the 1934 bill, as already shown, expressly states that "[i]n one sense," *vis-a-vis* "clerks, secretaries, and the like", every labor organization is an employer and that "[i]n its relations with its own

¹⁴ Although the two bills were considered by different Congresses, the composition of the Senate Committee in 1935 was substantially the same as that of the 1934 Committee (cf. 1 Leg. Hist. (1935) 28 (II) and 1 Leg. Hist. (1935) 1374 (II)).

employees, a labor organization ought to be treated as an employer, and the bill so provides."

The excerpt from the 1935 Senate Report does not detract from this conclusion. It shows on its face that the purpose of Congress in providing that the term "employer" shall not include any labor organization "other than when acting as an employer" was to permit labor organizations to carry on their normal organizing activities among employees of other employers without running afoul of the Section 8 (a) (1) and (2) proscriptions of the statute, which make it an unfair labor practice for an employer to participate in the organizational activities of workers. This purpose is manifested even more clearly in the legislative history of the 1934 bill, S. 2926. In these circumstances, the somewhat ambiguous reference in the Senate Committee Report on the 1935 Wagner bill to "the extreme case[s]" where labor organizations are acting as employers would seem to indicate no more than that the Committee was aware of the fact that, except in rare instances, a union's organizational attempts are addressed to employees of other employers, not to their own employees. Accordingly, we think that the Board correctly refused to read the Committee report on the Wagner Act as qualifying the explicit terminology of Section 2 (2).¹⁸

¹⁸ Nothing in the legislative history of the 1947 amendments to the Act casts any doubt upon this reading of the statute. Nor does the specification in Section 8 (b) of the amended Act of unfair labor practices by unions imply that labor organizations, in their normal functions, are not employers within the meaning of the Act. Section 8 (b) merely specifies unfair labor practices with respect to the employees of other employers for which labor organizations are held accountable.

II

THE ACT, HOWEVER, DOES NOT REQUIRE THE BOARD TO
 ASSERT ITS JURISDICTION OVER LABOR ORGANIZATIONS
 ACTING AS EMPLOYERS

Petitioner asserts initially (Br. 11-22) that, in view of the specific inclusion of unions (when acting as employers) within the statutory definition of the term "employer," the Board is compelled, as a matter of law, to assert its jurisdiction, provided that the requirement as to commerce is satisfied. But the Board "as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 265. The statute, instead of conferring "private rights," grants only rights "in the interest of the public" to be protected by "a public procedure, looking only to public ends." *Agwilines, Inc. v. National Labor Relations Board*, 87 F. 2d 146, 150-151 (C. A. 5). The statute vests the agency with exclusive primary jurisdiction to protect these rights and "to give effect to the declared public policy of the Act." *National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350, 362. In order to permit the Board to administer the provisions of the Act so as to give effect to its declared public policy, Congress "reposed in the Board complete discretionary power to determine in each case whether the public interest requires it to act." *National Labor Relations Board v. Newark*

Morning Ledger Co., 120 F. 2d 262, 268 (C. A. 3), certiorari denied, 314 U. S. 693. To that end, the Act "empowers" the Board, as provided therein, to prevent any person from engaging in the proscribed unfair labor practices. Section 10 (a).

As this Court recognized in *United States v. Morton Salt Co.*, 338 U. S. 632, 647-648, "unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns." "Proceeding, prior to 1950, on a case-to-case basis, and since that time pursuant to general standards which it has established and periodically revised," the Board has declined jurisdiction in numerous cases on the theory "that it better effectuates the purposes of the Act, and promotes the prompt

¹⁶ See, also, *National Labor Relations Board v. Townsend*, 185 F. 2d 378, 383 (C. A. 9), certiorari denied, 341 U. S. 909; *Hotel Employees Local No. 255 v. Leedom*, Civil Action No. 134-56 (U. S. Dist. Ct., D. C.), decided January 8, 1957; *Task Force Report on Regulatory Commissions* (Appendix N), prepared for the Commission on Organization of the Executive Branch of the Government (G. P. O. 1949), 21-22, 41, 138.

¹⁷ See Sixteenth Annual Report of the National Labor Relations Board (G. P. O. 1952), pp. 15-16, 20-39; Seventeenth Annual Report (G. P. O. 1953), pp. 9, 12-21; Nineteenth Annual Report (G. P. O. 1955), pp. 2-5. The establishment by the Board of these general standards followed hearings in which Congress was advised of the Board's declination of jurisdiction in many instances, but on a case by case basis and an admonition by Senator Taft that the Board should "make some declaration of policy" in this respect. *Hearings before the Senate Committee on Expenditures in the Executive Departments on S. Res. 248*, 81st Cong., 2d Sess., 40; *Report of the Joint Committee on Labor-Management Relations*, S. Rep. 986, Part 3, 80th Cong., 2d Sess., 11-15; S. Rep. 99, 81st Cong., 1st Sess., 40; H. Rep. 1852, 81st Cong., 2d Sess., 10; *Hearings before Senate Committee on Labor and Public Welfare on S. 249*, 81st Cong., 1st Sess., 175-176, 177, 1024-1025, 1286-1287.

handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have a pronounced impact upon the flow of interstate commerce" (*Breeding Transfer Company*, 110 NLRB 493-495), as well as for a variety of other reasons.¹⁸ If the Board concludes that the policies of the Act would be better effectuated by declining to assert its statutory jurisdiction, it may refuse to issue a complaint.¹⁹ It may also dismiss a complaint which has already issued without determin-

¹⁸ *E. g.*, *Godchaux Sugars, Inc.*, 12 NLRB 568, 576-579 (union had agreed not to press charges if employer would agree to an election); *Consolidated Aircraft Corp.*, 47 NLRB 694, 706-707 (failure of parties to exhaust arbitration procedures of their contract); *Allis-Chalmers Mfg. Co.*, 72 NLRB 855 (execution of contract rendered affirmative order unnecessary).

¹⁹ *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9, 18-19; *Progressive Mine Workers v. National Labor Relations Board*, 3 Labor Cases, par. 60133 (C. A. D. C.); *White v. National Labor Relations Board*, 9 LRRM 657 (C. A. D. C.); *National Labor Relations Board v. Red Rock Co.*, 187 F. 2d 76, 78 (C. A. 5), certiorari denied, 341 U. S. 950; *National Labor Relations Board v. Concrete Haulers*, 215 F. 2d 959 (C. A. 5), denying motion to modify decree; *National Labor Relations Board v. Barrett Company*, 120 F. 2d 583, 586 (C. A. 7); *National Labor Relations Board v. National Broadcasting Company*, 150 F. 2d 895, 899 (C. A. 2); *Anthony v. National Labor Relations Board*, 132 F. 2d 620, 621 (C. A. 9); *National Labor Relations Board v. General Motors Corp.*, 116 F. 2d 306, 312 (C. A. 7); *Lincourt v. National Labor Relations Board*, 170 F. 2d 306, 307 (C. A. 1); *General Drivers, Chauffeurs, and Helpers v. National Labor Relations Board*, 179 F. 2d 492, 494-495 (C. A. 10); *Wilke v. National Labor Relations Board*, 15 Labor Cases, par. 64798 (C. A. 4).

ing the merits of the case," subject to the limitation that its action must not be arbitrary or capricious.²¹ As this Court, noting the Board's practice, has stated: "Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case." *National Labor Relations Board v. Denver Building & Construction Trades Council*, 341 U. S. 675, 684.

This discretionary exercise by the Board of its jurisdiction is authorized by Section 10 (*infra*, p. 43). Under Section 10 (a), the Board "is empowered," but not directed, "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce," and under Section 10 (b) it has

²⁰ *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U. S. 675, 684; *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9, 19; *Optical Workers' Union Local 24859, et al. v. National Labor Relations Board*, 227 F. 2d 687 (C. A. 5), certiorari denied, 351 U. S. 963; *National Labor Relations Board v. Federal Engineering Co.*, 153 F. 2d 233, 234 (C. A. 6); *Local Union No. 12 v. National Labor Relations Board*, 189 F. 2d 1, 4-5 (C. A. 7), certiorari denied, 342 U. S. 868; *Haleston Drug Stores, Inc. v. National Labor Relations Board*, 187 F. 2d 418, 420-422 (C. A. 9), certiorari denied, 342 U. S. 815; *Teamsters, etc., Local 183 v. National Labor Relations Board* (C. A. 9), decided June 14, 1956, 38 LRRM 2305; see *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 776, and separate opinion of Frankfurter, J., at 778.

²¹ *Pedersen v. National Labor Relations Board*, 234 F. 2d 417 419 (C. A. 2); *Joliet Contractors Ass'n. v. National Labor Relations Board*, 193 F. 2d 833, 844 (C. A. 7).

"power," but is not directed, to issue complaints and conduct hearings."

Petitioner's argument that Section 2 (2) of the Act compels the Board to assert its jurisdiction over labor organizations acting as employers overlooks the fact that it is Section 10, not Section 2 (2) of the statute, which confers upon the Board its authority to assert or decline jurisdiction in unfair labor practice cases. Section 2 (2) purports merely to define the term "employer." That section does not constitute a mandate that the Board must assert its jurisdiction over labor organizations as employers, as distinguished from other employers included within the definition of the term "employer." It simply puts labor organizations, viewed in relation to their own employees, in the broad category of employers; as the court below held, "it did no more than that" (R. 264).

Nor does the legislative history of Section 2 (2) suggest a congressional purpose to treat labor unions differently from other employers. If anything, it shows that Congress intended that they be treated the same. As pointed out *supra*, pp. 17-19, the original versions of both the 1934 and 1935 Wagner bills excluded labor organizations altogether from the definition of employer. Witnesses who appeared before the Senate Committee on Education and Labor in

²² In this connection, it is also significant that even where the Board has exercised its jurisdiction and found that unfair labor practices have been committed, the Act vests the Board with a broad discretion to determine what remedy would effectuate the statutory policies. Section 10 (c). And the statute also leaves it to the Board's discretion whether or not to seek enforcement of its unfair labor practice orders in the courts. Section 10 (e).

1934 in opposition to this proposed exclusion urged that "the same restrictions put upon management should also be put upon labor organizations", and they characterized the exclusion as "unfair."²² The insertion in the final versions of both the 1934 and 1935 bills of the parenthetical words "other than when acting as an employer" was apparently made in response to critics who argued that labor-union employers should be treated the same as other employers—not differently, as petitioner contends.

Petitioner further asserts (Br. 20) that, even assuming that the Board might decline jurisdiction over unions whose operations as employers have a "meager" effect upon commerce, it may not adopt an administrative standard which would result in a declination of jurisdiction over labor-union employers as a class. But the Board's declination of jurisdiction over such employers relates only to the traditional, noncommercial aspect of their operations.²³

²² Statement of Leslie Vickers, Economist, American Transit Association, at Hearings before the Committee on Education and Labor, United States Senate, 73rd Cong., 2d Sess., on S. 2926, p. 662 (1 Leg. Hist. (1935) 720). In similar vein, see statements of other witnesses. Hearings, *id.*, pp. 460, 651-652, 752-753, 902, 951; Hearings, 74th Cong., 1st Sess., on S. 1958, p. 604 (1 Leg. Hist. (1935) 494, 689-690, 790-791, 940, 989; 2 Leg. Hist. (1935) 1990).

²³ The Board has, however, declined to assert jurisdiction over whole classes of employers—such as taxicab companies and hotels—chiefly because the operations of such employers, although affecting commerce in the statutory sense, are by their nature essentially local entities. *Checker Cab Co.*, 110 NLRB 683; *Hotel Association of St. Louis*, 92 NLRB 1288. Its right to decline jurisdiction over the hotel industry has recently been upheld in *Hotel Employees Local No. 255 v. Leedom*, Civil Action No. 134-56 (U. S. Dist. Ct., D. C.), decided January 8, 1957.

Petitioner suggests (Br. 20-21) that unions, as such, do not engage in commercial enterprises and that the Board's declination of jurisdiction over unions acting as employers in the course of their traditional functions would be tantamount to reading labor organizations out of the statutory definition of employers, in disregard of the congressional purpose. But the fact is that unions do engage extensively in various commercial activities and that Congress was so advised prior to the enactment of the Wagner Act. Presumably it was, at least in part, because of these representations that Congress decided not to exclude them from the statutory definition of the term "employer." Leslie Vickers, representing the American Transit Association, told the Senate Committee on Education and Labor, in opposing the exclusion of unions from the definition of employer, that the "history of labor organizations becoming rich and powerful and entering into business is too recent to disregard * * * . Under the exclusion as now contained in the bill it is entirely conceivable that labor organizations in themselves will displace industrial organizations, and if and when they do they will not be required under the language of this exclusion to comply with the provisions of this act." Hearings before the Committee on Education and Labor, U. S. Senate, 73rd Cong., 2d Sess., on S. 2926, p. 682 (1 Leg. Hist. (1935) 720). In similar vein, Dr. Gus W. Dyer, professor of economics, Vanderbilt University, assured the Committee that "[l]abor organizations may employ an unlimited number of workers to engage in all sorts of

business activities." Hearings, *id.*, p. 902 (1 Leg. Hist. (1935) 940).

Although it is rare that unions directly operate commercial businesses, it is undisputed that they exercise control—generally, through stock ownership—over many kinds of incorporated businesses—radio stations, daily newspapers, banks, insurance companies, office buildings, real estate developments, laundries, cigar making, clothing manufacturing, shoemaking, fruit processing, the sale of sundry supplies to United States merchant ships, etc.² The fact that they

² Nathan Belfer, "Trade Union Investment Policies," *Industrial and Labor Relations Review*, Vol. 6 (April 1953, pp. 338-342, 343, 345-346; Hardman and Neufeld, *The House of Labor* (N. Y. 1951), pp. 327-328; Peterson's *American Labor Unions* (N. Y. London, 1945), pp. 176-179; Millis and Montgomery, *Organized Labor* (1945), pp. 344-352; *Business Week*, January 1, 1955, p. 56, April 18, 1953, p. 172, and March 29, 1952, p. 179; *Nation's Business*, July 1955, pp. 46, 49-50; *U. S. News & World Report*, Vol. 38 (February 11, 1955), pp. 101-104, Vol. 37 (August 6, 1954), pp. 78-80, Vol. 28 (March 31, 1950), pp. 41-42; *Fortune*, Vol. 38 (December 1948), pp. 200-201; *Sales Management*, Vol. 61 (September 1, 1948), pp. 119-121; *The National Underwriter* (National Weekly Newspaper of Fire and Casualty Insurance Co.), July 21, 1955, p. 1; U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Vol. 77 (September, 1954), pp. 1014-1015. President's Supplemental Report, *Proceedings of the Twenty-first Biennial and Sixty-first Convention of the Bricklayers, Masons and Plasterers' International Union of America* (October 1952), pp. 31-32; *Reports of Officers to the Thirty-fourth Convention of the International Printing Pressmen and Assistants' Union of North America* (August 1948), p. 17; *Summary of Proceedings Including Report of the Officers to the 27th U. I. U. Convention of the Upholsterers' International Union of North America* (June 4-12, 1953, New York City, N. Y.), p. 70; *AFL-CIO News*, Vol. II, No. 2 (January 12, 1957), p. 7; President's Report, *Fourteenth Biannual Convention of the International Airline Pilots Association, Chicago, Ill.* (November 5 to 9, 1956), p. 16.

ordinarily operate these businesses through a corporate structure does not mean that they cannot be reached by the Board as employers of the corporations' employees. Section 2 (2) includes within the definition of employer "any person acting as an agent of an employer, directly or indirectly," and the Board has consistently followed a policy of holding liable, as employers, individuals or organizations other than the direct employer where their relation to the latter, either as an agent or as a controlling entity, is such that their conduct interfered with the rights guaranteed employees under the Act.²⁶ In other situations

²⁶ E. g., *Bethlehem Steel Corporation*, 14 NLRB 539, enforced, 120 F. 2d 641, 650 (C. A. D. C.), and *Condenser Corp.*, 22 NLRB 347, 361-362, enforced, 128 F. 2d 67, 71 (C. A. 3) where the parent corporation, which was sole stockholder of the direct employer, was held liable as an employer of the subsidiary's employees; *Holtville Ice & Cold Storage Co.*, 51 NLRB 596, 603, 614, enforced, 148 F. 2d 168, 170 (C. A. 9), where a farmers' association and its manager who acted in the interest of the direct employer were similarly held responsible; *Blue Ridge Shirt Manufacturing Co. and Fayetteville & Lincoln County Chamber of Commerce*, 70 NLRB 741, 742-743, enforced without opposition, 177 F. 2d 202 (C. A. 6), where a Chamber of Commerce was held liable; *Taylor-Colquitt Co.*, 47 NLRB 225, 240-243, enforced, 140 F. 2d 92, 93 (C. A. 4), where the wife of the leading foreman of the company was held to be a Section 2 (2) employer; *Russell Mfg. Co.*, 82 NLRB 1081, 1084-1085, where the Board made a similar finding as to police officers who assisted the direct employer, enforcement denied on evidentiary grounds, 187 F. 2d 296, 297-298 (C. A. 5); *Salant & Salant*, 66 NLRB 24, 38, 44, 45, where the Board made a similar finding as to a citizens' committee, enforcement denied on grounds that their activities were protected by Section 8 (c) of the Act, enforced as amended, 183 F. 2d 462, 465 (C. A. 6).

as well, the Board has not hesitated to look through the corporate veil in order to assess responsibility."

Accordingly, a Board decision not to assert jurisdiction over a labor organization acting as an employer in relation to persons hired to assist it in performing its functions as a union does not mean that the Board is declining to assert jurisdiction over labor-union employers as a class. To be sure, the Board has rarely had occasion to decide a case involving a labor-union employer. The instant case is the first in the Board's 20-year history in which it has been called upon to decide whether such an employer, acting in a noncommercial capacity, has engaged in unfair labor practices (R. 230a). And only once, in *Air Line Pilots Association*, 97 NLRB 929 (which the Board in this case expressly overruled insofar as it might be inconsistent), has the Board had occasion to decide a representation case involving a labor-union employer acting in such a noncommercial capacity

"In *Bausch & Lomb Optical Co.*, 108 NLRB 1555, for example, the Board relieved the employer of his obligation to bargain with a union chosen by his employees because that union had set up a corporation, substantially all of whose shares were owned by the union members, to engage in a business in competition with the respondent employer. And in *Guayama Bakers*, 27 LRRM 1322, the trial examiner dismissed an allegation that the employer had discriminatorily discharged the union's president because the union had established a rival baking business. Cf. *United States v. Seafarers Sea Chest Corp. and Seafarers' International Union of North America, Atlantic and Gulf District*, Civil Action No. 14,674 (D. C. E. D. N. Y.), in which a consent judgment in an antitrust suit was entered on March 20, 1956, against both the union and a corporation which it had set up to furnish sundry supplies to United States merchant ships..

(R. 235a, n. 7).²⁸ Moreover, in only one case has the Board found that a labor-union employer engaged in a commercial enterprise has violated Section 8 (a) provisions of the Act. *Otter Trawlers Union, Local 53*, 100 NLRB 1187, 1188, 1195-1198.²⁹ Also, in only a few instances, such as *Bausch & Lomb* and *Guayama Bakers, supra*, have the commercial activities of labor-union employers been a major factor in the disposition of a case. The fact, however, that proceedings before the Board only infrequently involve labor-union employers hardly supports the notion that the statute should be construed to deprive the Board of discretion in such cases.

²⁸ In that non-adversary proceeding, the Board held that, although the Association was not a labor organization within the meaning of the Act since it represented employees who were subject to the Railway Labor Act, it was a labor union in the generally accepted sense and was an employer within the meaning of the statute. While recognizing that no standards had yet been set for testing the Board's jurisdiction in such cases, the Board nevertheless concluded: "As the Board normally assumes jurisdiction over enterprises which are multi-state in character, and as no valid reason has been advanced for applying a different standard here, we find that the Employer is engaged in commerce within the meaning of the Act, and that it would effectuate the policies of the Act to assert jurisdiction" (*id.* at 930).

²⁹ There, the Board, adopting the trial examiner's intermediate report (to which no exceptions had been filed in this respect), found that a union which had as members the captains and owners of fishing vessels, as well as the latter's crewmen, was a statutory employer of those crewmen, "for Section 2 (2) of the Act states, in part, 'the term "employer" includes any person acting as an agent of an employer, directly or indirectly'" (*id.* at 1195). It asserted jurisdiction on the basis of the effect on commerce of the fishing business of the vessel owners.

III

THE BOARD, IN THE EXERCISE OF ITS DISCRETION, MAY APPLY TO LABOR ORGANIZATIONS, ACTING AS EMPLOYERS IN THE COURSE OF PERFORMING THEIR TRADITIONAL FUNCTIONS, THE SAME STANDARDS WHICH IT APPLIES TO OTHER NONPROFIT, NONCOMMERCIAL VENTURES

Petitioners final claim (Br. 23-28) is that, in any event, the Board abuses its discretionary authority if it applies to labor-union employers, performing their normal functions, the same jurisdictional standards which it has adopted and applied to other nonprofit organizations.

Section 2 (2), before its amendment in 1947, excluded from the definition of employer only "the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization." As amended and passed by the House in 1947, Section 2 (2) provided, in conformity with similar exclusions from the Federal income tax and payroll tax laws (26 U. S. C., Supp. III, Sections 501 (c) (3) and 3306 (c) (8)), that the following also be excluded: "any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual" (H. R. 3020, 80th Cong., 1st Sess., pp. 3-4 (1 Leg. Hist. (1947))

158, 160-161)).³⁰ The Senate version of the proposed amendment of Section 2 (2), as originally reported, contained no exemption of the type added in the House bill. S. 1126 (Report No. 105), 80th Cong., 1st Sess., p. 4 (1 Leg. Hist. (1947) 102). During the debate on the Senate bill, Senator Tydings offered, and the Senate accepted, an amendment excluding from the definition of "employer" "any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual" (93 Cong. Rec. 4997 (2 Leg. Hist. (1947) 1464-1465)).³¹

³⁰ The House Report explains this exemption as follows:

"Churches, hospitals, schools, colleges, and societies for the care of the needy are not engaged in 'commerce' and certainly not in interstate commerce. These institutions frequently assist local governments in carrying out their essential functions, and for this reason should be subject to exclusive local jurisdiction. The bill therefore excludes from the definition of 'employer' institutions that qualify as charities under our tax laws. In this respect, the bill is consistent with similar laws in a number of States, notably New York, Pennsylvania, and Wisconsin. The bill does not exclude from the definition institutions organized for profit or those a substantial part of whose activities is carrying on propaganda or attempting to influence legislation" (House Report No. 245 on H. R. 3020, 80th Cong., 1st Sess., p. 12 (1 Leg. Hist. (1947) 303)).

In criticizing the bill, the House Minority Report stated: "While the Board has, generally speaking, not taken jurisdiction of such enterprises, this proposal would exclude from the coverage of the act organizations which, for example, conduct a large insurance business as was the case in *Polish National Alliance v. N. L. R. B.* (322 U. S. 643)." House Minority Report, p. 68 (1 Leg. Hist. (1947) 359).

³¹ During the hearings before the Senate Committee on Labor and Public Welfare, statements were made by the president of the American Hospital Association and by the president of the Board of Trustees, Johns Hopkins Hospital, opposing the inclusion of nonprofit charitable hospitals within the coverage of the Act and

The Act, as finally passed, adopted the Senate amendment. The Conference Report on the Act, in explanation of the adoption of that amendment, states:²²

The conference agreement follows the * * * Senate amendment in the matter of exclusion of nonprofit corporations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act.²³

the attention of the Committee was called to the fact that the Board had theretofore asserted jurisdiction over a nonprofit charitable hospital in the District of Columbia. *Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., Part 4, 2181-2184, 2241-2243.* The Board had theretofore, in 1943, asserted jurisdiction over a hospital in the District of Columbia which had been incorporated as a nonprofit charitable institution and its right to do so was expressly upheld in *National Labor Relations Board v. Central Dispensary & Emergency Hospital*, 145 F. 2d 852, 853 (C. A. D. C.), certiorari denied, 324 U. S. 847, enforcing 50 NLRB 393.

²² H. Conf. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., p. 32 (1 Leg. Hist. (1947) 536). This explanation is almost identical with that given by Senator Taft on the floor of the Senate when urging the passage of the provision approved in the Conference Report. 93 Cong. Rec. 6441 (2 Leg. Hist. (1947) 1536).

²³ Actually, when the Board found that the interstate commercial transactions of these nonprofit organizations were substantial, it asserted jurisdiction. *Christian Board of Publication*, 13 NLRB 534, 537; *American Medical Association*, 39 NLRB 385, 386-387; *Polish National Alliance*, 42 NLRB 1375, 1380; *Central Dispensary & Emergency Host*, 50 NLRB 393,

It would seem clear that Congress, in its discussion of the matter, was not purporting to make a comprehensive and exclusive listing of all nonprofit organizations over which the Board might properly decline to assert jurisdiction. Congress left that task to the Board, noting at the same time, for the Board's guidance in the future, its general approval of the Board's abstention from exercising its statutory jurisdiction over nonprofit employers save in the exceptional circumstances noted above. As the Board stated in *The Trustees of Columbia University*, 97 NLRB 424, 427, "Regardless of whether or not the conference report literally recites the Board's practice prior to the amendment of the Act [see n. 33, *supra*], it does indicate approval of and reliance upon the Board's asserting jurisdiction over nonprofit organizations 'only in exceptional circumstances and in connection with purely commercial activities of such organizations.' Whether or not this language provides a mandate, it certainly provides a guide."

Accordingly, subsequent to the enactment of the Taft-Hartley Act, as before, the Board followed a policy of declining jurisdiction over nonprofit organizations which are not substantially engaged in activities considered "commercial in the generally accepted sense," even though the organization's activities "affect commerce sufficiently to satisfy the requirements of the statute and the standards estab-

395-396; and *Henry Ford Trade School*, 58 NLRB 1535, 1536-1537. When those transactions were not substantial, it found that the policies of the Act would not be effectuated by the assertion of jurisdiction. *Hyde Park Cooperative Society*, 73 NLRB 1254.

lished by the Board for the normal exercise of its jurisdiction * * *." *Trustees of Columbia University*, 97 NLRB 424, 425." The effect on commerce of the noncommercial activities of such organizations is considered by the Board as "too remote" to warrant its exercise of jurisdiction. *Philadelphia Orchestra Association*, 97 NLRB 548, 549. On the other hand, pursuant to its policy of asserting jurisdiction only over those "enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce" (*Hollow Tree Lumber Co.*, 91 NLRB 635, 636), the Board has asserted jurisdiction over nonprofit organizations, a substantial part of whose activities are conducted on a commercial basis."

"That case involved the employees of the libraries of Columbia University. See, also, *Philadelphia Orchestra Association*, 97 NLRB 548, involving the employees of a nonprofit symphony orchestra; *Lutheran Church, Missouri Synod*, 109 NLRB 859, involving employees of a radio station operated on a noncommercial basis for the benefit of a church; and *Armour Research Foundation of Illinois Institute of Technology*, 107 NLRB 1052, involving employees engaged in technical research operations which were, for the most part, noncommercial in nature.

"*Illinois Institute of Technology*, 81 NLRB 201 (whose technical research was industrially sponsored); *General Electric Company*, 89 NLRB 1247 (whose operation of a nonprofit hospital was intimately related to its operation of a plutonium manufacturing plant); *Port Arthur College*, 92 NLRB 152 (radio station owned and operated by a nonprofit educational institution was operated on a commercial basis for profit); *Oklahoma State Union of Farmers' Educational and Cooperative Union of America*, 92 NLRB 248 (nonprofit marketing cooperative's operations were commercial in nature); *Sunday School Board of the Southern Baptist Convention*, 92 NLRB 801 (nonprofit religious corporation engaged, *inter alia*, in publication and sale of religious literature); *Bemis Brothers Bag Co.*, 95 NLRB 44, and *Olin Industries*,

At the time of the enactment of the 1947 amendments, the Board had not yet had occasion to pass on the question whether it should assert jurisdiction over labor-union employers and other types of nonprofit organizations not specifically mentioned in the legislative history.* When the instant case came before it for decision, the Board issued a notice that it would hear oral argument, informing the parties that the Board was primarily interested in "the legal and policy considerations" bearing upon its assertion of jurisdiction. Before the Board questions were raised, *inter alia*, as to whether, in determining the effect on commerce of the operations of the Teamster organizations as employers, the business activities of the employers with whom they dealt as unions should be considered controlling; whether the Teamster organizations should be treated for jurisdictional purposes the same as commercial employers engaged in multi-

97 NLRB 130 (nonprofit voluntary associations organized and operated by commercial employers for purpose of furnishing recreational and other facilities to their employees); *Kennecott Copper Corp.*, 99 NLRB 748 (nonprofit hospital and dispensary operated by corporation for sole benefit of its mining employees); *California Institute of Technology*, 102 NLRB 1402 (nonprofit educational institution operated, among other research projects, a huge wind tunnel sponsored and used by five industrial aircraft companies); *Massachusetts Institute of Technology*, 110 NLRB 1611 (nonprofit educational institution engaged, *inter alia*, in huge research project for Department of Defense); *Disabled American Veterans, Inc. (Idento Tag Operation)*, 112 NLRB 864 (nonprofit veterans' association engaged in assembly and distribution of miniature license identification tags to car owners).

* E. g., *Philadelphia Orchestra Association*, 97 NLRB 548, 549 (nonprofit symphony orchestra over which the Board declined jurisdiction).

state enterprise; whether the nonprofit character of these organizations, either as a matter of law or of policy, should prompt the Board to decline jurisdiction; and whether—as in *Bausch & Lomb Optical Co.*, 108 NLRB 1555.³⁷—the competitive interests of the charging union and the Teamster unions in organizing the employees of the latter, should cause the Board, as a matter of policy, to dismiss the complaint. The many policy considerations discussed before the Board not only point up the difficult problems with which the Board was faced, but suggest that no single view may be deemed the only reasonable one on the question whether it would effectuate the policies of the Act for the Board to assert jurisdiction.

The view that it would not effectuate the policies of the Act to assert jurisdiction over the Teamster organizations because their activities were “not substantial engagement in a commercial venture within the contemplation of the Board’s jurisdictional principles for nonprofit employers” (R. 234a), is, we submit, neither arbitrary nor unreasonable. The Board had already decided in a number of cases that it would not assert jurisdiction over nonprofit organizations unless such organizations engaged in commercial businesses. The application of this standard in the instant case was based on the fact that the activities of all the Teamster organizations involved are nonprofit and noncommercial in nature. None is engaged in business or conducts a commercial enter-

³⁷ In that case, as already noted, the Board, for policy reasons, dismissed a complaint against an optical company charging it with an unlawful refusal to bargain with a union which had set up a rival optical company to compete with the respondent company.

prise in the ordinary sense. Instead, the basic purpose of each is to provide benefits for Teamster members and to advance the cause of employees generally.

Thus, the International, the Joint Council and locals seek to improve working conditions, increase job security, and promote employee welfare by engaging in the usual activities of labor organizations. Although the 872 locals throughout the country (only two of which are involved in this case) transmit to the International in Washington, D. C., membership fees and per capita taxes totaling several million dollars annually, this is obviously not a business operation in the generally accepted sense." The Building Association operates an office building not as a commercial enterprise in the usual sense, but in order to provide office space at the lowest possible cost for various Teamster organizations who are its only tenants. It has virtually no interstate inflow or outflow of funds and none of the locals which are its incorporators is engaged in any commercial enterprise." The Security Plan Office is a fiduciary engaged

"Local 206, one of two locals involved herein, in the fiscal year ending June 30, 1954, transmitted \$46,786 to the International (R. 36a). The other, Local 223, transmitted \$7,258 (*ibid.*). Only \$8,609 of the revenue of the Joint Council came from outside the State of Oregon (*ibid.*).


"As pointed out in the Farmer-Peterson opinion (R. 235a, n. 6), if the Building Association were to be considered as standing alone, it does not meet the Board's jurisdictional standard for an employer operating an office building. See *McKinney Avenue Realty Company (City National Bank)*, 110 NLRB 547, in which the Board ruled that it would assert jurisdiction over the operator of a building only if he is otherwise engaged in commerce and uses the building to house his own offices.

in administering thrust funds established under collective bargaining agreements, a typical labor union function in the furtherance of employee welfare. Unlike the fraternal organizations involved in *Polish National Alliance*, 42 NLRB 1375, enforced, 136 F. 2d 175 (C. A. 7), affirmed, 322 U. S. 643, and *Knights of Columbus*, 1-RC-3913 (1955) (unreported), over which the Board asserted jurisdiction, the Security Plan Office merely purchases and pays premiums on insurance policies and processes and pays claims arising under them. It does not operate an insurance business as do the typical fraternal organizations. Accordingly, since the Teamster organizations are nonprofit employers and were not substantially engaged in any commercial venture in this case, the Board, we think, can appropriately treat them as it would any other nonprofit, noncommercial employer in deciding whether to assert its jurisdiction.

CONCLUSION

We respectfully submit that the judgment of the court below is correct.

However, as already indicated, only two of the five Board members found that it would not effectuate the policies of the Act to assert jurisdiction in this case. In these circumstances, if this Court agrees that the Teamster organizations are employers within the meaning of the Act, the Court may deem it appropriate at this time to defer ruling upon the issues



raised by the petition and to remand the case to the Board for further consideration.

Respectfully submitted,

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FEBRUARY 1957.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are as follows:

DEFINITIONS

SEC. 2. When used in this Act—

* * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * *

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYES INTERNATIONAL UNION, Local No. 11,
AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

Motion of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America,
AFL-CIO, et al., for Leave to File Petitions for
Rehearing of the Order Denying Motion for Leave
to Intervene and for Rehearing of the Case on the
Merits

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Warehouse-

men Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Joint Council of Drivers, No. 37, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Teamsters Building Association, Inc., a nonprofit corporation; Oregon Teamsters' Security Plan Office; William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each moves this Honorable Court for leave to file the two annexed petitions for rehearing. One of these petitions seeks a rehearing of the order of this Court entered March 25, 1957 denying the motion of the International Brotherhood of Teamsters, etc., *et al.*, for leave to intervene and the other seeks a rehearing of the order of this Court entered May 6, 1957 reversing the judgment below and remanding the case to the Court of Appeals for the District of Columbia Circuit for remand to the National Labor Relations Board for further proceedings. Rehearing of the order denying the motion for leave to intervene is sought out of time because the order of May 6, 1957, disposes of the case on the merits in a manner which deprives the applicants for intervention of rights when they have never been accorded a hearing in this Court and this Court has not heard anyone else who sought to protect their rights.

This is the first time, so far as we have been able to ascertain, that this Court has ever deprived a person of a judgment or order in his favor without affording him, or someone representing his interest, the opportunity to be heard. This Court has heretofore recognized that the right to be heard required that parties be admitted as original intervenors in this Court where

by a combination of circumstances the case in this Court would affect their substantive rights although they had not been parties in the court below. *United States v. Terminal Association of St. Louis*, 1915, 236 U.S. 194, 199.

The principle that no court can constitutionally deprive a party of his rights without affording him an opportunity to be heard is so well established that we can find no basis for the denial of the petition to intervene unless it was based on either the assumption that the National Labor Relations Board would defend its order in such a manner as to represent fully the interests of the applicants for intervention or the assumption that this Court's disposition of the case on the merits would not adversely affect the applicants.

Not until this Court on May 6, 1957 handed down its decision of this case on the merits was it established that neither of these two assumptions was justified in this case. Although it was apparent at the time of the oral argument herein that the National Labor Relations Board could in no sense be regarded as adequately representing the interests of the applicants for intervention, it was still possible that the Court had in mind a disposition of the case which would have preserved the rights of the applicants for intervention.

In refraining from filing a petition for rehearing of the order denying intervention within time we bowed to the view that this Court in its wisdom had before it considerations unknown to us which justified the denial. The subsequent course of events leads us to believe that some inadvertence must have occurred and that there was no proper basis for denying

intervention. For the decision of this Court on the merits makes it apparent that applicants have been denied rights without any hearing.

The questions during oral argument herein, which various members of this Court addressed to counsel for the National Labor Relations Board inquiring if there was anyone before the Court arguing in opposition to the position taken by the petitioner with respect to the power of the Board, strongly suggests that at least some members of this Court denied the motion to intervene without a full appreciation of the absence of any representation of the applicants' position.

The extent to which the decision of this Court deprives the applicants of intervention of rights without a hearing was also not possible of ascertainment until the decision on the merits. The decision of this Court sets aside both a judicial decree and an administrative order which had terminated administrative proceedings brought against the applicants for intervention by a complete dismissal and which had further adjudicated that none of the applicants for intervention would be subject to Section 8(a) of the National Labor Relations Act with respect to their noncommercial activities.

The opinion of this Court takes no notice of the fact that Section 302(c)(5)(B) of the Labor Management Relations Act (29 U.S.C. 186(c)(5)(B)) removes some 10 of the 23 employees here involved from the jurisdiction of the National Labor Relations Board, because they have been selected by representatives of employers and representatives of employees as "neu-

tral" persons to assist in the administration of health and welfare funds (R. 87a-88a, 230a-231a, Tr. 46, 56, 105-108, 121-124, 362, G.C. Exh. No. 2). They are not employed by labor organizations but rather by the trustees of the Security Plan or by William C. Earhart, the administrator appointed by the trustees. Both the Security Plan and William C. Earhart are applicants for intervention herein. The Board dismissed on the broader ground of its policy against assuming jurisdiction over nonprofit organizations without ever passing on the issues of jurisdiction raised by the Security Plan and Earhart (R. 13a, 18a, 21a; Transcript of Oral Argument before Board, pp 14, 22). The opinion of this Court unless clarified may be construed by the Board and the courts as requiring a mandatory exercise of jurisdiction over the Security Plan and Earhart although the issues of jurisdiction as to them were never decided by the Board and they had no hearing before this or any other court on this issue.

Applicants believe that a petition for rehearing out of time should be permitted because they, by their petition to intervene timely filed herein, took all the appropriate steps proper to protect their rights prior to the decision of this Court on the merits.

The second petition for rehearing which is annexed hereto, namely the petition for rehearing of the case on the merits, is timely submitted. Leave to file it is necessary solely because the applicants for intervention do not have the status of parties to this suit.

The foregoing reasons for granting leave to file out of time the petition for rehearing of the denial of

intervention, equally support the application for leave to file a petition for rehearing of the case on the merits.

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Petition for Rehearing of Order Denying Motion For Leave to Intervene

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, C.I.O., its affiliated organizations involved herein, Oregon Teamsters' Security Plan Office, and William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each respectfully petitions that this Court grant rehearing of its order of March 25, 1957, denying the motion of such petitioners for leave to intervene herein and enter an order granting leave to intervene herein for the purpose of filing the annexed petition for rehearing of the case on the merits.

REASONS FOR GRANTING REHEARING AND PERMITTING INTERVENTION

Under the applicable precedent of this Court applicants were entitled as of right to intervene herein if the parties before the Court did not adequately represent their interests and the judgment entered would adversely affect them. *United States v. Terminal Association of St. Louis*, 1915, 236 U.S. 194, 199. Both from the briefs filed herein by the parties before the Court and from the positions asserted at oral argument herein it would be impossible to maintain that any party before the Court adequately represented the interests of the applicants. Likewise a consideration of the effect of the judgment of this Court leaves no doubt the applicants for intervention have had their legal rights adjudicated in this case.

The effect of the denial of intervention in this case upon the development of administrative law is far reaching. The denial in effect stands as a precedent

for the proposition that a respondent before an administrative agency may properly be deprived of any day in court when an order in his favor is being contested, even though the administrative agency for some reason has decided to abandon in whole or in part the decision rendered in favor of the respondent. The courts have heretofore held that even where the administrative agency was vigorously and fully defending its order of dismissal, the successful respondent should be permitted to intervene in the courts to support the dismissal. *Charles Albrecht v. N.L.R.B.*, 7 Cir., 1950, 181 F. 2d 652, 653; *American Newspaper Publishers Association v. N.L.R.B.*, 7 Cir., 1951, 190 F. 2d 45, 49, certiorari denied, 344 U.S. 812; *Jacobsen v. N.L.R.B.*, 3 Cir., 1941, 120 F. 2d 96, 97. Cf. *Morris v. S.E.C.*, 2 Cir., 1941, 116 F. 2d 896, 897-898; *Tatum v. Cardillo*, S.D.N.Y., 1951, 11 F.R.D. 585. There would seem to be no reason that the successful respondent should not have the same right to intervene and be heard in this Court where the order of dismissal in his favor has been sustained by the Court of Appeals, as he has to intervene and be heard in the Court of Appeals.

The extent to which the decision of this Court upon the merits forecloses rights of the applicants for intervention where they have never been afforded a hearing is most obvious with respect to the ten employees who serve as neutral persons assisting the trustees who administer the health and welfare plans. These employees actually decide claims against the health and welfare funds (R. 230a, 231a, Tr. 121-123, 362). The opinion of this Court might be construed by the National Labor Relations Board or the lower courts as requiring a mandatory exercise of jurisdiction over

these individuals. The two applicants for intervention, the Security Plan Office and William C. Earhart, individually and as administrator of the Security Plan Office, denied before the Labor Board that they were labor organizations (R. 13a, 18a, 21a, Transcript of Oral Argument before Board, pp. 14, 22). Nevertheless the opinion of this Court might easily be construed as treating them as a labor organization and subject to the mandatory jurisdiction of the Board. The requirements of Section 302(c)(5)(B) of the Labor Management Relations Act (29 U.S.C. 186(c)(5)(B)), that persons who assist trustees in administering health and welfare funds, be neutral, that is not affiliated with either employers or labor organizations, was never even called to the attention of this Court by counsel for the National Labor Relations Board. The Board itself had never found it necessary to pass on this issue as it had dismissed the cases on the broader ground that it would treat all the respondents as nonprofit organizations engaged in noncommercial enterprises over which the Board did not exercise jurisdiction.

Certainly the applicants for intervention, the Security Plan Office and William C. Earhart, must be allowed to intervene herein and present their contentions respecting Section 302(c)(5)(B) on the jurisdiction of the Board as to persons assisting in the administration of health and welfare funds under Section 302, as admittedly these persons were (R. 87a-88a, 230a-231a, Tr. 46, 56, 105, 108, 121-124, 362, G. C. Exh. No. 2).

In the petition for rehearing annexed hereto we set forth the extensive legislative history which supports the position of the other five applicants for interven-

tion that the Act is not applicable to their activities in employing personnel for the transaction of purely trade union functions. There is no indication in the opinion of the Court that those portions of the legislative history of the statute were considered by the Court. Certainly they were not brought to this Court's attention by the parties to this matter in either their briefs or oral argument.

Fairness and equity as well as traditional principles governing the intervention of parties require that the applicants for intervention be permitted to present their arguments on these issues to the Court by the same means, that is by both written brief and oral argument, as the countervailing arguments were presented.

We respectfully submit that some inadvertence with respect to either the adequacy of the Board's representation of the applicants' position or the effect which the decision of the issues would have on applicants' rights, must have occasioned the denial of the petition to intervene. A rehearing on the motion to intervene should be granted, leave to intervene should be ordered and the applicants for intervention should be permitted to file the annexed petition for rehearing on the

merits and participate in all further proceedings in this Court.

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Petition for Rehearing of the Case on the Merits

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, C.I.O., its affiliated organizations involved herein, Oregon Teamsters' Security Plan Office, and William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each respectfully petitions that this Court grant rehearing of its order of May 6, 1957 reversing the judgment below and remanding the case to the Court of Appeals for the District of Columbia Circuit with directions to remand the same to the National Labor Relations Board for further proceedings.

REASONS FOR GRANTING REHEARING

1. By treating the Security Plan Office and William C. Earhart as Teamsters organizations when the Board expressly found they were not, the opinion of this Court may be construed as holding that persons engaged in determining the validity of claims against health and welfare funds are protected in the right to join a labor organization even though Section 302(c) (5)(B) of the Labor Management Relations Act (29 U.S.C. 186 (c)(5)(B)) requires they be neutral as respect either employer or union affiliation. The opinion of this Court repeatedly characterizes all the respondents before the Board as "teamster organizations" or as the "Teamster group." The opinion further states that the "Teamster group was composed of unions." Neither the Security Plan Office nor William C. Earhart, two of the respondents before the Board, is a labor organization. The ten employees here involved who work for the Security Plan Office

and Earhart are not employed either directly or indirectly by any labor organization. The petitioner herein has never so contended and neither the Board nor the Trial Examiner found them to be such. The Board and the Trial Examiner made separate findings as to the Security Plan Office and Earhart in recognition of the fact they were not labor organizations. For instance the Board showed it did not regard the Security Plan Office as a Teamster organization by stating (R. 231a):

“All of the tenants of this office building are exclusively Teamster organizations, except for Security Plan Office.”

Similarly the Board recited with approval that (R. 232a):

“the Trial Examiner found that all the Respondents except Security Plan Office were an integral part of a multi-state enterprise, consisting of the International and all its affiliates”

The Board's affirmative findings with respect to the Security Plan Office establish that it is not a labor organization. The Board found (230a-231a):

“Oregon Teamsters' Security Plan Office, hereinafter called Security Plan Office, which is the name assumed by an organization, consisting at the time of the hearing in this case of an administrator, Respondent Earhart, and a staff of office and clerical employees. With the aid of this staff, Earhart administers 18 trust funds established, pursuant to Section 302 of the Taft-Hartley Act, by collective bargaining agreements between various Teamster locals and employers in Oregon, Washington, Idaho and Montana. Under the applicable trust arrangements the administrator

of these funds is appointed by the trustees, half of whom are designated by Teamsters, the balance by the interested employers. With contributions to the trust funds furnished by the employers, the administrator purchases health and welfare insurance policies for the employee beneficiaries of the trusts, and his office processes and pays claims under these policies."

The record shows without the slightest dispute or qualification that the ten individuals employed by Earhart and the Security Plan Office are engaged in determining the validity of claims made by employees to health and welfare benefits (Tr. 121-123, 362).

The Board in dismissing the proceedings against Earhart and the Security Plan Office did not proceed on the ground that they were labor organizations and as such nonprofit organizations but rather made a finding that the Security Plan Office was also a nonprofit organization (R. 233a-234a).

In view of the importance which the complete neutrality of all who administer employee welfare trusts has assumed in recent months, we cannot believe this Court would wish to leave unclarified a decision which on its face plainly deals with such trusts but completely ignores the relevant legal considerations. Section 302 of the Labor Management Relations Act by subsections (a) and (b) makes it unlawful and by subsection (d) supplies criminal sanctions where money is paid or received in connection with such a trust unless all who assist the trustees in administering the trust are neutral as required by subsection (c)(5)(B). Any reading of the opinion of this Court as directing mandatory jurisdiction over trustees or administrators of trust funds would deprive the word "neutrality" in

subsection (c)(5)(B) of its usual meaning by compelling trustees and administrators to permit those who are required to be neutral as between employer and union to be at the same time members of unions.

2. This Court's analysis of the legislative history rests upon one committee statement which was made in 1934. The bill was not enacted in 1934. This committee report was never acted upon by Congress. The provision in question was withdrawn when the bill was introduced at the next session of Congress (Senate Comparison of S. 1958, 74th Cong., 1st Sess. with S. 2926, 73rd Cong., 2d Sess., as reported, p. 19, reprinted 1 Leg. His. N.L.R.A. 1935, p. 1342). When the bill was reported in 1935, a new narrower explanation of the parenthetical expression qualifying the exemption of labor unions appeared. This explanation can only be read as indicating Congressional intent to reach labor unions as employers only when they departed from traditional trade union activities (S. Rept. No. 573, on S. 1958, 74th Cong., 1st Sess., p. 6, reprinted 2 Leg. His. N.L.R.A. 1935, p. 2305).

Except for this one rejected committee statement in 1934 there is not another single item in the legislative history of either the Wagner or the Taft-Hartley Act which supports the construction adopted by this Court.

In the hearings preceding the enactment of the original National Labor Relations Act there was not a single witness who so much as suggested that employees of labor organizations as such should be protected in the right to self organization. The only concern for the right of employees of labor organizations was in instances where the labor organization did not function as a labor organization but rather as a busi-

ness enterprise. The only two witnesses who expressed the view that there were instances in which it might be desirable to protect employees of unions were Leslie Vickers and Dr. Gus W. Dyer. Both of these witnesses were concerned about unions going into business. Vickers stated (Hearings before the Senate Committee on Education and Labor on S. 2926, 73rd Cong., 2d Sess., p. 682, reprinted 1 Leg. His. N.L.R.A., 1935, p. 720) :

"The history of labor organizations becoming rich and powerful and entering into business is too recent to disregard in connection with this subject. * * * Under the exclusion as now contained in the bill, it is entirely conceivable that labor organizations in themselves will displace industrial organizations, and if and when they do they will not be required under the language of this exclusion to comply with the provisions of this act."

Dr. Dyer said (Hearings, *op. cit.*, p. 902, reprinted 1 Leg. His. N.L.R.A. 1935, p. 940) :

"Labor organizations may employ an unlimited number of workers to engage in all sorts of business activities. But they are not employers and those who work for them are not employees."

There is nothing in the testimony of Vickers or Dyer to show that they opposed the exclusion of labor organizations from the definition of employer in any instance where the labor organization restricted its activities to those traditional to trade unions.

In the years subsequent to the enactment of the Wagner Act and prior to the enactment of the Taft-Hartley Act the Wagner Act was uniformly characterized in Congress and elsewhere as a statute which

regulated only employers in the interest of employees and unions. Indeed, this Court may take judicial notice of the widespread criticism of the one-sided character of the Wagner Act because it did not regulate unions at all and that it was this criticism which resulted in the enactment of the Taft-Hartley Act.

The legislative history of the Taft-Hartley Act establishes that the unfair labor practices of labor organizations are specified in Section 8 (b) of the Act. The committee reports speak of the subjection of labor unions to unfair labor practice charges as new, H. Rept. No. 245, on H.R. 3020, 80th Cong., 1st Sess., p. 30, reprinted 1 Leg. His. L.M.R.A. 1947, p. 321; S. Rept. No. 105 on S. 1126, 80th Cong., 1st Sess., p. 21, reprinted 1 Leg. His. L.M.R.A. 1947, p. 427. The unfair labor practices proscribed in Section 8(b) are pertinent in relation to employees of other employers rather than in the context of their own ordinary employer-employee relations. Thus, for example in Section 8(b)(2), unions are prohibited from "causing or attempting to cause other employers" to discriminate against their employees, but unions are not forbidden to discriminate against their own employees. The specification in Section 8(b) of what are unfair labor practices by unions necessarily excludes others not mentioned, under well established principles of statutory construction.

3. The opinion of this Court may be read as requiring the National Labor Relations Board to assert jurisdiction over the respondents named in the complaints issued by the Board without leaving the Board discretion to decline for policy reasons to proceed in the instant cases. Assuming that the Board abused its discretion in categorizing all labor unions not engaged

in business enterprises as nonprofit charitable organizations and laying down a policy that it would not proceed against any nonprofit non-business enterprise, still there are many other relevant policy considerations which might properly motivate the Board to decline jurisdiction. The opinion of this Court points to nothing and we can think of nothing which makes the Board's jurisdiction over labor organizations more mandatory than its jurisdiction over any other employer. Unless this Court means that the Board can never decline jurisdiction over any employer the Board should have the same power to assess the relative impact on commerce of the unfair labor practices here charged which it exercises in all other cases.

CONCLUSION

For the foregoing reasons it is respectfully submitted that a rehearing of the case on the merits should be granted and that the case should be set down for reargument with the petitioners granted the status of full parties with the right to participate in oral argument.

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May 29, 1957

Certificate of Counsel

I hereby certify that each of the two foregoing petitions for rehearing is presented in good faith and not for delay.

Counsel for Petitioners

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No. 22

IN THE
Supreme Court of the United States

October Term, 1956

OFFICE EMPLOYERS INTERNATIONAL UNION, LOCAL
No. 11, AFL-CIO, Petitioner

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF OF THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS CHAUFFEURS WARE-
HOUSEMEN AND HELPERS OF AMERICA,
AFL-CIO, ET AL. AS AMICI CURIAE

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL
No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

**REPLY BRIEF OF THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA,
AFL-CIO, ET AL., AS AMICI CURIAE**

**I. THIS COURT SHOULD DECIDE THE JURISDICTIONAL ISSUES
WITHOUT REMANDING SUCH ISSUES TO THE NATIONAL
LABOR RELATIONS BOARD**

The *amici curiae* agree with the position asserted by
petitioner in the first point of Reply Brief for Peti-
tioner (pp. 1-3), namely, that this Court should here

and now decide the issue as to whether the Board properly dismissed the complaints against *amici curiae* as not within the appropriate jurisdiction of the Board. The *amici curiae*, as the successful parties in the proceedings before the Board, would be deprived of due process of law were this Court to adopt the Board's suggestion that the case should be remanded because the change in the membership of the Board might today result in a different decision than that reached by a majority of those who sat when the case was decided. (Brief for the National Labor Relations Board, pp. 15-16). Due process requires that finality be accorded each decision of an administrative agency or a court unless there is no valid ground upon which the decision can be sustained. The possibility that due to a change in personnel an administrative agency would no longer reach the same decision cannot be legally relevant.

The Board's remand suggestion rests upon the erroneous assumption that then Chairman Farmer and then Board Member Peterson rested their decision exclusively on policy grounds. But as we set forth in our main brief (pp. 26-28) then Chairman Farmer and then Board Member Peterson agreed with Board Member Murdock that Congress did not intend for the Board to assert jurisdiction in this situation. This determination was not one of administrative policy or discretion. It was a determination of statutory construction, the validity of which is for ultimate decision by this Court, not by any administrative officials.

Moreover, even a decision of an administrative agency on policy grounds should be reviewed and enforced or set aside by courts, solely on the basis of whether the decision was a legally permissible one.

If changes in personnel of administrative agencies could occasion remands of cases decided by those no longer in office, the whole statutory scheme of administrative agencies would soon become unworkable because no finality could inhere in any policy decision.

II. THE BOARD'S ANALYSIS OF THE LEGISLATIVE HISTORY OF SECTION 2(2) OF THE ACT IS MISLEADING

At page 21 of the Board's Brief an attempt is made to give the impression that the Senate Committee Report on the bill which became the original National Labor Relations Act did not characterize the instance of a union acting as an employer of employees as an "extreme case," but rather used the term "extreme" because "except in rare instances, a union's organizational attempts are addressed to employees of other employers, not to their own employees." The language of the Senate Report read literally however uses the word "extreme" to refer to the instances of a union being an employer, not to the instances of union organizational activity among employees of the union. Thus the pertinent language reads (Senate Report No. 573, 74th Cong., 1st Sess., May 2, 1935, accompanying S. 1958, reprinted 2 Leg. His. N.L.R.A., 1935, p. 2305):

"The term 'employer' excludes labor organizations, their officers, and agents (except in the extreme case when they are acting as employers in relation to their own employees)."

We likewise disagree with the Board's assertion (Brief, p. 21, n. 15) that "Nothing in the legislative history of the 1947 amendments to the Act casts any doubt" upon the construction which the Board's brief places on Section 2(2) of the Act. The excerpts from

the legislative history of the 1947 amendments to the Act, which are set forth and cited in our main brief (pp. 71-72) contain repeated statements that management must be accorded the same freedom to choose its labor relations personnel, whether supervisory or clerical, as labor unions already had. The amendment exempting supervisors from the Act was expressly rested on this ground. Congress thereby manifested its understanding that labor unions in the hiring of their usual office staff were not subject to the inhibitions of Section 8(a) of the Act.

CONCLUSION

For the foregoing reasons it is urged that this Court should affirm the judgment below and sustain the order of the Board dismissing all complaints against the *amici curiae*.

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No. 421

IN THE
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OCTOBER TERM, 1956

OFFICE EMPLOYEES INTERNATIONAL UNION,
LOCAL NO. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

MOTION OF THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA AFL-CIO, ET AL. TO INTER-
VENE OR IN THE ALTERNATIVE FOR LEAVE TO FILE
REPLY BRIEF AND PRESENT ORAL ARGUMENT AS
AMICUS CURIAE

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Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYES INTERNATIONAL UNION,
LOCAL No. 11, AFL-CIO, *Petitioner*

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The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, AFL-CIO; Joint Council of Drivers, No. 37, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; Teamsters Building Association, Inc., a non-profit corporation; Oregon Teamsters' Security Plan Office; William C. Earhart, individually and as administrator of the Oregon Teamsters' Security Plan Office, each moves this Honorable Court for leave to intervene herein as a party for the purpose of urging that the judgment below be affirmed, and in support of such motion states:

1. Each of the applicants for intervention was named as a party respondent charged with the commission of unfair labor practices in violation of Section 8 (a) of the National Labor Relations Act (29 U.S.C.A. 158(a)) in one or more of four complaints issued by the General Counsel of the National Labor Relations Board in six different cases instituted before the Board by charges filed by the petitioner, Office Employees International Union, Local No. 11, AFL-CIO.¹ The National Labor Relations Board dismissed all of these complaints upon jurisdictional grounds, *sub nom Matter of Oregon Teamsters' Security Plan Office*, 113 NLRB 987 (R. 229a-236a). The court below affirmed the Board's order of dismissal in an opinion reported in 235 F. 2d 832 (R. 261-266). This Court

¹ Since the decision in the court below one of the respondents named in the complaints issued by the General Counsel of the National Labor Relations Board, namely, John J. Sweeney, an agent of the International Brotherhood of Teamsters, has died. With respect to the issues of jurisdiction which are before this Court John J. Sweeney stood in no different position than the five applicants for intervention other than the Oregon Teamsters' Security Plan Office and William C. Earhart, administrator thereof.

granted certiorari on November 13, 1956 (352 U.S. 906.)

2. Each of the applicants for intervention will again be subjected to proceedings before the National Labor Relations Board by the judgment of this Court should it grant the relief requested by the petitioner, namely, to reverse the judgment below and remand the case to the Board "with directions for it to assume jurisdiction of the complaints and make findings on the substantive issues in this matter" (Brief for Petitioner, p. 28). In further proceedings before the Board the applicants for intervention could be subjected to, among other things, the payment of back pay, reinstatement of certain workers, and other orders which would substantially affect the rights of the applicants for intervention.

3. Upon the filing by the National Labor Relations Board of its brief in this Court on February 21, 1957, the applicants for intervention herein learned for the first time that instead of defending its order the Board itself suggests that it may be appropriate for this Court to set aside the Board's order and remand the case to the Board for reasons never before raised in this case by any party either before the Board or in the court below or in this Court (Brief for the National Labor Relations Board, pp. 15-16, 41-42). The Board in its brief here ignores completely the determinative finding of two of the three Board members who joined in the order of the Board dismissing the complaints, namely, the finding of then Chairman Farmer and then Board member Peterson "that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been estab-

lished" (R. 234a). The Board in its brief here argues that the third Board member who joined in the dismissal order, namely, Board Member Murdock, who held that none of the applicants for intervention is an employer within the meaning of National Labor Relations Act (R. 236a-239a), was in error in so holding (Brief for N.L.R.B., pp. 12-13, 17-21). The Board suggests that if this Court agrees that Board Member Murdock proceeded on an erroneous basis, the Court may properly remand the case to the Board, without considering the validity of the reasons which motivated then Chairman Farmer and then Board Member Peterson to join in the dismissal order because the two did not constitute a majority of the five man Board which sat in this case (Brief for N.L.R.B., pp. 15-16, 41-42). It was never urged before the Board nor in the court below nor did the petition for a writ of certiorari present any question as to the effect upon the validity of the Board's order of the lack of agreement between the members of the Board or of any error in the reasons assigned by only one of those who joined in the order of dismissal.

4. There appears to be no way in which this Court could dispose of this case without entering a judgment which would be binding on each of the applicants for intervention. Since there is no party before the Court which is representing the position of the applicants for intervention, they are entitled as of right to intervene here and be heard in their own behalf. *United States v. Terminal Association of St. Louis*, 1915, 236 U.S. 194, 199. If the judgment below should be reversed here without the applicants for intervention having been heard as parties and without any other party representing their interest, they will be deprived

of due process of law in violation of the Fifth Amendment to the Constitution of the United States. Cf. *Consolidated Edison Co. v. N.L.R.B.*, 1938, 305 U.S. 197, 218, 233-234; *L. B. Wilson, Inc. v. F.C.C.*, D.C. Cir., 1948, 170 F. 2d 793, 802-803; *Wolpe v. Poretsky*, D. C. Cir., 1944, 144 F. 2d 505, 507-508, certiorari denied, 323 U.S. 777. A hearing at each appellate level at which a binding determination is made by a court is as much an attribute of due process as a hearing before a trial court or an administrative agency. The right to be heard in oral argument must be granted to all parties who may be adversely affected where it is granted to the prevailing party. Cf. *Londoner v. Denver*, 1908, 210 U.S. 373; *L. B. Wilson, Inc. v. F. C. C.*, *supra*, 170 F. 2d at 805.

5. The position of the applicants for intervention with respect to the questions presented by the petition for a writ of certiorari and by the Brief for Petitioner has been fully set forth in "Brief of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al., as *Amici Curiae*" filed herein on February 21, 1957, with the consent of all the parties. The applicants for intervention are content to have said brief stand as their brief on the merits should they be permitted to intervene, but desire leave to file a reply brief to deal with the Board's suggestion that a remand to the Board may be in order and also desire leave to present oral argument with as much time allotted to their defense of the Board's order as is granted in the aggregate to the parties who contend that the Board's order should be set aside.

7. We have been unable to find any comparable case in which the Board was arguing in the courts that its

own order dismissing a complaint was invalid and should be set aside. Even where the Board was defending its own dismissal order the successful respondent before the Board has on occasion been permitted to intervene in the courts to support the dismissal. *Charles Albrecht v. N.L.R.B.*, 7 Cir., 1950, 181 F. 2d 652, 653; *American Newspaper Publishers Association v. N.L.R.B.*, 7 Cir., 1951, 190 F. 2d 45, 49, certiorari denied, 344 U.S. 812; *Jacobsen v. N.L.R.B.*, 3 Cir., 1941, 120 F. 2d 96, 97. Cf. *Morris v. S.E.C.*, 2 Cir., 1941, 116 F. 2d 896, 897-898; *Tatum v. Cardillo*, S.D. N.Y., 1951, 11 F.R.D. 585. The question does not seem to have arisen often because the party who was a respondent before the Board is usually named as a party respondent along with the Board in a petition to review a dismissal order. *Hicks v. N.L.R.B.*, 4 Cir., 1939, 100 F. 2d 804; *M.E.B.A. v. N.L.R.B.*, 3 Cir., 1953, 202 F. 2d 546, certiorari denied, 346 U.S. 819.

8. Warehousemen Local 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Joint Council of Drivers No. 37 and Teamsters Building Association, Inc., filed a motion for leave to intervene in the court below on September 20, 1955, alleging that they had "an interest in the above case and in fact are real parties at interest."² A "Consent of Petitioner and Respondent to Intervention in Instant

² The statement which we made in our brief *amici curiae* (p. 2) filed in this Court that six of the *amici curiae* applied for leave to intervene in the court below is apparently in error for the records of the court below show such an application only by the three. The six did join in the brief *amici curiae* filed below. There is no difference so far as jurisdictional issues are concerned between the three who did apply to intervene below and the three who did not but merely joined in filing an *amici curiae* brief.

Proceeding by Warehousemen Local 206, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Joint Council of Drivers No. 37 and Teamsters Building Association, Inc." signed by counsel for the petitioner, Office Employees International Union Local No. 11 and by counsel for the National Labor Relations Board was filed in the court below on September 27, 1955. The court below in a *per curiam* order filed on October 7, 1955 denied the motion for leave to intervene "it appearing that movants have not made a sufficient showing of interest to justify their status as parties. The order granted "movants" the right to appear as "*amicus curiae*." A brief *amici curiae* was filed in the court below on behalf of all the applicants for intervention except the Oregon Teamsters' Security Plan Office and William C. Earhart, administrator thereof. The National Labor Relations Board argued vigorously in support of its order in the court below and was successful in having it affirmed.

9. Although we believe that the court below was in error in denying the motion for leave to intervene there, no petition for a writ of certiorari to review that order was sought. In view of the ultimate action of the court below in affirming the Board's order, a petition to review that court's denial of "intervention would have been an idle gesture" (*Allen Calculators, Inc. v. National Cash Register Co.*, 1944, 322 U.S. 137, 142), except as it might have been relevant to the status of the applicants for intervention in this Court in the contingency that it granted a petition for a writ of certiorari to review the judgment below, as has now occurred. The failure to apply for certiorari should

not prejudice the present motion for leave to intervene here. To hold that it did would impose on all unsuccessful applicants for intervention the burden of seeking review of the denial of their application whenever there exists a theoretical possibility of review in this Court of the case on the merits. Moreover, the motion to intervene in this Court rests on a new ground not available in the court below in that at no time prior to the filing of the Board's brief in this Court on February 21, 1957, did applicants have any reason to suspect that the Board instead of defending its order would suggest that it would be appropriate for this Court to set aside the Board's order and remand to the Board for further proceedings if this Court agrees with the Board that Member Murdock rested his concurrence on an erroneous ground.

10. Since both of the parties before this Court take the position that it would be appropriate for this Court to set aside the Board's order, and both parties are arguing in opposition to Board Member Murdock's determination that none of the applicants for intervention is an employer (R. 236a-239a), the applicants for intervention in their capacity as *amici curiae* have no party on their side to whom they can appropriately apply for a share in oral argument. The shortness of the time already allotted to each party due to the placing of the instant case on the summary docket, makes it most unlikely that any of the parties could appropriately be expected to share their oral arguments with *amici curiae* whose views were diametrically opposed to their own in so many basic respects as obviously appears by a comparison of the brief *amici curiae* already filed herein by the applicants

for intervention, with the briefs filed herein by petitioner and the Board.

For the foregoing reasons it is respectfully urged that this motion for leave to intervene as parties in support of the judgment below be granted, with leave to file a reply brief and present an oral argument under an assignment of time in which the amount of time allotted for defense of the Board's order is equal to that granted to the parties who would have the Board's order set aside. If such leave is denied, or action thereon deferred until the decision of the case on the merits, it is respectfully urged that leave to file a reply brief as *amici curiae* and to present such oral argument as *amici curiae* be granted to the applicants for intervention.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL
No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA, AFL-CIO,
ET AL., AS AMICI CURIAE

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 422

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL
No. 11, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

**BRIEF OF THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA, AFL-CIO,
ET AL., AS AMICI CURIAE**

INTEREST OF THE AMICI CURIAE

The *amici curiae* are the eight respondents against whom the petitioner in this Court is attempting to compel the National Labor Relations Board to pro-

ceed. By name the *amici curiae* are (1) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; (2) its agent, John J. Sweeney; (3) its Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; (4) its Warehousemen Local No. 206; (5) its Joint Council of Drivers, No. 37; (6) Teamster Building Association, Inc.; (7) Oregon Teamsters' Security Plan Office; and (8) William C. Earhart, administrator thereof.

Each of the *amici curiae* was named as a respondent in one or more of some four complaints in six different cases issued by the General Counsel of the National Labor Relations Board upon charges filed by the petitioner, Office Employees International Union, Local No. 11, AFL-CIO. The National Labor Relations Board dismissed all of these complaints upon jurisdictional grounds, *sub nom Matter of Oregon Teamsters' Security Plan Office*, 113 NLRB 987 (R. 229a-236a). The court below affirmed the Board's order of dismissal in an opinion reported in 235 F. 2d 832 (R. 261-266).

The *amici curiae* were not named as parties in the court below. Applications for leave to intervene there in support of the Board's order of dismissal were made by six of the *amici curiae*, all except the Oregon Teamsters' Security Office, and William Earhart, administrator thereof. The court below denied leave to intervene and ordered that in lieu thereof briefs as *amici curiae* would be accepted. The six did file a brief *amici curiae* below.

It is thus obvious that each of the *amici curiae* has the same interest in supporting the judgment below

affirming the order of the Board dismissing unfair labor practice proceedings, as any respondent in Board proceedings has in preserving an exculpatory order in his favor obtained from the Board or the courts.

The *amici curiae* have an even more direct interest in presenting to this Court their views in support of the Board's order of dismissal than usually exists when the Board is defending its order. Counsel for the Board in opposing certiorari and in defending the Board's order in the court below ignored completely the finding upon which the majority of the Board based its action, namely, the finding by the then Chairman Farmer and the then Board member Peterson "that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been established" (R. 234a). We have not seen the Board's brief on the merits and do not know what will be its position in this Court with respect to the above quoted finding. In view of the fact that neither the above mentioned chairman nor the above mentioned Board member is presently serving on the Board, there is no reason for us to suppose that their finding will be presented to the Court by the counsel for the Board.

With respect to the opinion of the third member of the Board who joined in the order dismissing proceedings against the *amici curiae*, Board Member Murdock, counsel for the Board has not ignored his position but briefed the opposite view. Board Member Murdock construed the word "employer" in Section 2 (2) of the National Labor Relations Act (29

U.S.C. 152 (2)) as excluding all the activities of a labor organization in furtherance of traditional trade union objectives and as including only activities of a labor organization devoted to the operation of business or commercial enterprises (R. 236a-239a).

The *amici curiae* believe that both the finding of the majority that the requisite effect on commerce had not been established and the construction of Board Member Murdock of the word employer as not embracing non-commercial activities of a labor organization, are proper and should be sustained by this Court. The *amici curiae* so urged in their brief in the court below. While the questions before this Court pose solely the issue of whether the Board abused its discretion in failing to exercise jurisdiction, if the majority of the Board was correct in its finding that it had no jurisdiction, the questions with respect to abuse of discretion must be answered in favor of the Board. And if our arguments that the Board correctly held that it had no jurisdiction do not convince the Court, they serve to show that at the very least the Board did not abuse its discretion in dismissing.

Two of the *amici curiae*, the Oregon Teamsters' Security Plan Office, and William C. Earhart, administrator thereof, are neither labor organizations, nor officers nor agents of labor organizations. Earhart is the administrator designated by a bi-partisan board of trustees, half of whom are chosen by the employer and half by the union, to determine as a neutral whether claims against health and welfare funds are meritorious and to pay such as he deems proper (Tr. 121-124, 362). Although there is no evidence in the record that any employer contributing health and welfare funds is engaged in an industry affecting commerce within the

meaning of Section 302 of the Labor Management Relations Act, the record does show that the office has been set up and Earhart and his staff appointed in strict accord with that section (R. 87a-88a, Tr. 46, 56, 105-108, G. C. Exh. No. 2). Section 302 would subject both employer and union representatives to criminal sanctions if any employer contributing funds for health and welfare were engaged in an industry affecting commerce, and Earhart or any member of his office staff engaged in determining the merits of claims was other than the "neutral" required by subsection (c)(5)(B) of Section 302 (29 U.S.C. 186 (c)(5)(B)). The Oregon Teamsters' Security Plan Office is nothing more than a name used to designate the neutral office and staff, which Earhart uses in administering welfare funds (R. 87a-89a, Tr. 58-59). The record fails to show that anyone ever claimed that the Office or Earhart was a labor organization or the officer or agent of a labor organization. The complaints did not allege them to be such; both the Office and Earhart disclaimed such a character (*e.g.*, Transcript of Oral Argument before Board, pp. 14, 22); the Board made no findings that they were labor organizations or officers or agents of labor organizations.

The "Questions Presented" as stated both in the Petition for a Writ of Certiorari, page 2, the Brief of the Petitioner on the merits, page 2, and the Brief of the National Labor Relations Board in Opposition, page 2, are limited to the "labor organizations." We are unable to find anything in the Petition for A Writ of Certiorari which manifests any intention to bring before this Court for review the propriety of the Board's order of dismissal as to the Oregon Teamsters' Security Office and Earhart, its administrator. *Amici curiae*, accordingly, urge upon this Court that, what-

ever its ruling may be with respect to the Board's jurisdiction over labor organizations, it make clear that such ruling has nothing to do with the Oregon Teamsters' Security Office and Earhart, its administrator, and that the judgment below insofar as it affirmed the Board's dismissal against these two respondents has not been reviewed by this Court.

Despite the absence of any suggestion in the Petition for a Writ of Certiorari that any issues relating to the Oregon Teamsters' Security Office and Earhart were being brought before this Court for review, the brief in opposition to certiorari filed by counsel for the Board, made several references to the Office and Earhart on the apparent assumption that the Petition for a Writ of Certiorari sought to bring the propriety of the Board's dismissal as to them before this Court (see Brief of National Labor Relations Board in Opposition, p. 3, n. 2, pp. 4, 5).¹ And the Brief of the Petitioner on the merits (p. 3, n. 1, p. 4, n. 2) indicates that petitioner, even though there is no record support for the proposition, is nevertheless, loosely thinking of the Security Plan Office as a part

¹ The amount of health and welfare funds collected and the amounts paid as premiums to purchase insurance for health and welfare cannot properly be considered in determining jurisdiction over the International Teamsters Union, its affiliates and agents, because, after denying the motions of the several counsel for their respective clients to sever the cases and try them separately. (Tr. 97-98, 100), the Trial Examiner ruled that evidence of a jurisdictional character based on the health and welfare funds would be received only as evidence relevant to the Office and Earhart and would not be considered as evidence applicable to the other respondents (Tr. 102-103, 106-107). Both the Trial Examiner in his Intermediate Report (R. 85a-98a) and majority (R. 232a-234a), as well as dissenting members (R. 346a-247a) strictly observed this dichotomy.

of the Teamsters' Union. Without any intent to waive our position that no issue relating to the Office or Earhart, its administrator, is before the Court, we have, out of an abundance of caution, set forth our views as to why neither was subject to the jurisdiction of the Board.

Finally, the International Brotherhood of Teamsters, its affiliates and officers, quite apart from their position as respondents who will be subject to further proceedings before the National Labor Relations Board if the judgment below is reversed, are interested as members of the labor movement in defeating any construction of the law which would deprive unions of the right to conduct their traditional labor union activities through zealots for their cause.

It is inconsistent with the entire purpose of the National Labor Relations Act to hold that a labor union must not discriminate in the employing of union organizers, negotiators or confidential secretaries against persons because they hold anti-union views or adhere to competing unions. Yet that is the inevitable result which necessarily follows if a labor organization with respect to its traditional trade union activities is held to be an employer whose labor relations with its own employees affect commerce within the meaning of the Act. We believe it is clear from the legislative history of both the original national Labor Relations Act and the Labor Management Relations Act that Congress never intended the Act to be so construed. And if Congress did so intend, we urge that the First Amendment to the Constitution of the United States protects those who would proselytize for a cause or way of life from being required by law to hire or retain in their employment, as part of their

proselytizing staff, persons who are for any reason regarded as disloyal to that cause or way of life.

STATEMENT OF THE CASE

The Issues of Jurisdiction as Framed by the Complaints and Answers

The General Counsel in issuing complaints alleged that each of the respondents was an employer within the meaning of Section 2 (2) of the Act (R. 13a, 33a, 43a, 51a). He premised commerce jurisdiction as to each of the respondent locals of the Teamsters Union solely upon allegations that the locals represented employees of employers who were engaged in commerce within the meaning of the Act (R. 13a, 32a, 33a). He premised jurisdiction over the respondent International Teamsters Union upon allegations that it had locals in every state of the United States and in Canada, had officers, representatives and employees on duty throughout the United States and Canada, and had an annual revenue in excess of \$700,000 derived from dues, initiation fees and sales of supplies to locals (R. 31a, 33a-34a, 50a). He premised jurisdiction over the respondent Security Plan Office and Earhart, its administrator, upon allegations that it received in Portland, Oregon, funds from employers in both Oregon and Washington and transmitted insurance premiums of more than \$1,000,000 annually to, and received more than \$50,000 for expenses from, the Occidental Life Insurance Company of California at San Francisco (R. 12a, 51a). The General Counsel premised jurisdiction over the respondent Building Association upon the above allegations with respect to the interstate character of the locals, the International and the Security Fund, who were tenants in

an office building in Portland, Oregon owned by the Association (R. 32a-34a).

The International Teamsters Union (R. 73a, 33a, 76a, 43a) the Joint Council 37 (R. 66a, 67a, 43a) the Building Association (R. 60a-61a, 33a) and the various Teamster locals (R. 18a, 13a, 64a, 33a) each denied the various allegations charging it with being an employer within the meaning of Section 2 (2) of the National Labor Relations Act (R. 13a, 33a). The Security Plan Office, and Earhart, its administrator denied the allegations that the Security Plan Office or Earhart, its administrator, was an employer within the meaning of Section 2 (2) of the Act (R. 13a, 21a) and further alleged specifically that the Security Plan Office and Earhart, its administrator, were not subject to the Act (R. 18a). Each of the respondents by its answer denied that it was engaged in commerce within the meaning of the Act (R. 18a, 21a, 60a, 61a, 66a-67a, 73a, 76a). The respondent locals disclaimed any knowledge of, and therefore denied, the interstate character of the employers whose employees they represented (R. 18a, 63a-64a.)

The Evidence With Respect to Jurisdiction Introduced at the Hearing

At the hearing the General Counsel failed to offer any evidence to support his allegations that the Teamsters locals named as respondents represented any employees of employers engaged in commerce within the meaning of the Act. He also failed to introduce any evidence to show that any of the parties to the health and welfare plans administered by the Security Plan Office were employers engaged in an industry affecting commerce. The General Counsel likewise failed to offer

any evidence to show that a stoppage of any of the respondents' operations by labor strife would affect the flow of commerce.

Rather the General Counsel established only the monetary transactions implicit in the conduct by the Teamsters and its affiliates of traditional trade union activities and by the Security Plan Office and Earhart, its administrator, of his duties in paying claims. Thus the General Counsel showed that in the year prior to the hearing the International Teamsters Union collected \$5,755,232 in dues from some 1,204,477 members located throughout the United States, Alaska, Hawaii, Canada and the Canal Zone (R. 85a-86a). Local 206 collected \$156,839 from 2,750 members and remitted \$46,786 to the International (R. 86a) and Local 223 collected \$32,468 from 600 members and remitted \$7,258 to the International (R. 86a). He showed that during the same period Joint Council of Drivers, No. 37, was comprised of 23 Teamsters locals, 21 in the State of Oregon, and 2 in the State of Washington, and collected \$177,645 in per capita taxes from its constituent locals, of which \$8,609 represented per capita from locals in the State of Washington (R. 86a).

While the merits of the unfair labor practices charged are not before this Court for review, the evidence introduced to support the charges established the typical trade union character of the operations of the various respondent labor organizations and of the jobs performed by the employees here involved, as well as the impossibility of any substantial interruption to commerce resulting from labor strife among these employees. The International was not charged with having committed unfair labor practices against

any of its own employees. Indeed it is clear from the record that the only employee the International had in Portland, Oregon, was its organizer and international representative, John J. Sweeney, who was himself made a respondent in one of the complaints in his capacity as the agent through whom the International acted when it committed unfair labor practices (R. 49a-53a). The International was charged with, and the General Counsel attempted to prove it guilty of, having dominated its own Local 223, and of having interfered with, restrained, coerced and discriminated against employees of the other respondents, on the theory that the other respondents acted under the direction of the International when they committed unfair labor practices (R. 34a-36a, 44a-45a, 52a-54a). There was no evidence however, that the International was responsible for any of the unfair labor practices allegedly committed by the other respondents except insofar as the International in its capacity as principal was responsible for the acts of its agent, the respondent John J. Sweeney (R. 34a-36a, 44a-45a, 52a-53a, 128a-129a, 138a-139a, 150a, 161a, 181a-183a). In turn the evidence showed at most that Sweeney was responsible for the conduct of Local 223, as a consequence of the fact that as trustee in charge of the affairs of Local 223 he had appointed the Secretary who committed the acts proved against it (R. 181a).

With respect to said Local 223 the General Counsel charged, and attempted to prove, that the local violated Section 8 (a) (2) of the Act by dominating itself (R. 36a, 179a-180a). Local 223 had no full time employee, but only one part time employee, Manning, who served as "secretary-bookkeeper" for four Team-

sters locals, only one, Local 223, being a party in this case (R. 179a; Tr. 757). The only evidence of unfair labor practices by Local 223 was Manning's testimony that Hildreth, the Secretary of the Local appointed by Sweeney as trustee in charge of the affairs of Local 223, asked her to join Local 223 and withdraw from Local 11 of the Office Employees (R. 179a-180a; Tr. 759-760, 1092).

Local 206 had only two employees, Mrs. Crosby and June Cook (R. 165a). Mrs. Crosby did the bookkeeping, wrote out the checks, sent out contract notices to employers, prepared contracts, and handled dictation and correspondence for the officers of the local (R. 165a, 168a). Cook waited on the window where some of the large membership of 2,750 of the Local came to pay dues in person, handled the incoming mail, distributed publications among members and kept records of dues payments, initiations and withdrawals (R. 165a). When Mrs. Crosby was unavailable, Cook substituted for her (R. 166a).

Joint Council 37 employed several full time office clerical employees (R. 130a). The only one whose duties were shown by the evidence was Irene Barnes who served as personal secretary first to Graham, secretary-treasurer of the Joint Council (R. 130a), and later to respondent Sweeney who took over Graham's former duties for the Joint Council (R. 131a). Barnes also relieved the switchboard operator (R. 132a, n. 12). The Joint Council defended its discharge of Barnes as motivated by her conduct in secreting mail from Sweeney and listening in on telephone conversations (Tr. 1127-1138, 1147-1168, 1067-1073, 610-615, 619-621, 628-632, 638-640, 648-650, 657-658).

As evidence applicable solely to the Security Plan Office and Earhart, its administrator (Tr. 106-107), the General Counsel showed (Tr. 46, 56, 57, 105-108, 121-124, G. C. Exh. No. 2) that Earhart decided merits of claims as a "neutral" appointed by a bi-partisan board of trustees under health and welfare plans set up in compliance with Section 302 of the Labor Management Relations Act (29 U.S.C. 186). In all he served as the "neutral" administrator under plans set up in some 18 collective bargaining agreements between 23 Teamsters locals, and approximately 2,000 employers located in Oregon, Washington, Idaho and Montana, and covering some 16,000 employees (R. 87a, Tr. 56-58, 108-111, G. C. Exh. No. 2). These health and welfare plans were all insured by the Occidental Life Insurance Company in Los Angeles (Tr. 67-68). Earhart maintained his office in Portland, Oregon, where he and his staff of some ten employees received claims from employees, verified physicians' reports, determined eligibility and coverage of the claim and claimant, allowed or disallowed claims, and paid those allowed (Tr. 121-123, 362). Earhart's testimony indicated that contributions from employers normally went directly into the 18 separate bank accounts set up by the trustees for each trust and that the drawing and signing of checks on these accounts to pay premiums was done by the trustees themselves, rather than by Earhart or his staff (Tr. 59-60). The size of the premiums paid to the insurance company was \$2,000,000 a year (R. 88a). The record does not show the size of the return flow from the Insurance Company to meet payment of claims, though it does show that the Insurance Company remitted to Earhart 4 per cent of the premiums, or approximately \$80,000

a year, for use in running the Security Plan Office (R. 88a, Tr. 63-68):

The respondent Teamsters Building Association, Inc. is a non-profit corporation owning a two story office building in Portland, Oregon, which is known as the Teamsters Building (Tr. 185). The Building Association only had one full time employee, Olstad, who worked as a telephone operator on the building switchboard which served all the building offices (R. 112a). In addition to her duties as telephone operator, Olstad processed all mail entering the building (Tr. 612-614) and had charge of the public address system (R. 121a). All of the corporation's stock is owned by six Teamster locals and all of its space is occupied by either officers or affiliates of the Teamsters Union or its affiliates or by the Oregon Teamsters' Security Plan Office (R. 87a, 89a). The officers and affiliates of the Teamsters Union use their space solely for traditional trade union activities as hereinbefore described. The Security Plan Office uses its space solely for processing and paying employee claims under health and welfare plans (Tr. 103-104, 121-124). The entire income of the Building Association is derived from the rental of building space to its above described tenants and during the year ending June 30, 1954, this rental income totalled \$49,767 (R. 87a).

The Building Association had difficulties with its only employee, Olstad, as the result of complaints of the various Teamster officials who had offices in the building that she was listening in on their telephone calls (Tr. 593-595, 598-609, 649-654, 1108-1111, 1121, 1123-1124, 1172-1176). Admittedly several of the Teamsters officials installed private phone lines in their offices in the Teamsters Building and others

threatened to do so because of their distrust of Olstad (Tr. 593-594, 606-607, 651-653, 1111). Admittedly the Building Association was concerned by its tenants' dissatisfaction with the switchboard service it had set up as part of the facilities afforded tenants (Tr. 593-594). It is not clear from the record whether the Teamsters' officials believed that Olstad's sympathies with a competitor union,² the petitioner Office Employees Local Union 11, or some notion she could further her own interests, prompted her listening in on calls.

The record indicates that the trade union activities of the labor organizations owning and using the Teamsters Building were hampered by their distrust of Olstad's loyalty (Tr. 593-594, 651, 653). It also shows that the duties attached to her job were such that the Teamsters officers and affiliates could only function effectively if they are performed by an individual whose loyalty to the Teamsters they did not question. The same is true of the types of work performed by each

² Counsel for the petitioner, Office Employees Local 11, admitted at the oral argument of this case before the Board (pp. 45-46) and the evidence shows that in the Portland, Oregon area the Teamsters Union and the Office Employees Union were competing in the organizing of office employees. Indeed at the very time the alleged unfair labor practices occurred the National Labor Relations Board was conducting at least two elections in Portland or environs with locals of the Teamsters and locals of the Office Employees on the ballot as competing labor organizations (Tr. 300-304, 388-389). Numerous Board cases attest to the fact that the Teamsters often organizes and represents office employees, especially where it represents the production and maintenance employees, truck drivers, warehouse employees or some other unit of the same employer. Cf. *Southeastern Motor Truck Lines*, 113 NLRB 1122, 1131-1132 decided on day after Board order issued in instant case; *J. E. Falkin Motor Transportation, Inc.*, 114 NLRB 1369; *Walgreen Co.*, 13-RC-5277 election held December 12, 1956 and Teamsters Union certified for unit containing office employees.

of the employees of labor organizations which are described in the record, the personal secretary to union officers, the dues collection clerk, and others as hereinabove described. The testimony showed that the officers of labor organizations here involved regarded the work of these employees as highly confidential (Tr. 618-619, 1109). Their confidential character was urged upon the Board at oral argument before it (Tr. Oral Argument, p. 70).

The Board's Decision

The majority of the Board, the then Chairman Farmer and the then Board Member Peterson, held that with respect to their own employees labor organizations are "employers" within the meaning of Section 2(2) of the Act (R. 232a). They however found "that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been established" (R. 234a). (In the latter connection they pointed out that there was no inconsistency between the finding that the labor unions were employers within the meaning of the Act and the finding that they were not subject to the jurisdiction of the Board because their operation did not affect commerce. Thus then Chairman Farmer and then Board Member Peterson stated (R. 233a):

"Demonstrably, the mere inclusion of labor unions in the statutory definition of 'employer' does not constitute a legislative ukase that, in all instances, their operations affect commerce and that assertion of the Board's jurisdiction over unions will effectuate the policies of the Act.

"We consider the limited inclusion of labor organizations in the Act's definition of an 'em-

ployer' to be consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine whether the operations of a union-employer, like any other employer, affect commerce within the meaning of the statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act."

The then Chairman Farmer and the then Board Member Peterson also determined that it would not effectuate the policies of the Act to assert jurisdiction over the respondents (R. 230a).

In appraising the impact of strife among employees of the respondent upon commerce, the majority pointed out that the "relevant transactions of the Respondent International and its Locals" consisted of "interstate transmission" of dues and fees; of the Security Plan Office of sending of insurance premiums across state lines to an insurance carrier; and that the Joint Council and Building Association "have virtually no interstate inflow or outflow of funds" (R. 233a). The majority further found that the respondents' activities were entirely devoted to "advancement of employee interests" by non-profit and non-commercial transactions, which in their relationship to commerce fell in the same class as the activities of other non-profit and non-commercial organizations whose activities have never been deemed to affect commerce sufficiently to bring them under the Board's appropriate exercise of jurisdiction (R. 234a).

A third member of the Board, Murdock, construed the language of Section 2 (2) of the Act as excluding labor organizations from the definition of employer

except when unions engaged in business enterprises. He based this conclusion upon the legislative history of this section (R. 236a-238a). He stated his conclusion therefrom as follows (R. 236a):

“Congress did not intend, either in the Wagner Act or the Taft-Hartley Act, to regulate relations between unions and such employees as they utilize in their normal collective bargaining activities. When a union leaves its normal role as a collective bargaining agency, and embarks on a commercial enterprise, however, it obviously cannot carry into that field its immunity as a collective bargaining agency.”

Accordingly, the three above-mentioned, then Chairman Farmer, then Board Member Peterson and Board Member Murdock joined in dismissing upon jurisdictional grounds, and without consideration of the merits, all the complaints issued against the eight *amici curiae* (R. 236a).

Two Board members, Rodgers and Leedom, dissented. They deemed that the statutory inclusion of labor organizations in the definition of employer constituted a Congressional direction to the Board to assert jurisdiction over labor organizations irrespective of the impact of their activities upon commerce (R. 243a). They further stated, that even if they accepted the majority's position with respect to the labor union respondents, they would nevertheless assert jurisdiction over the Security Plan Office as they believed it was engaged in commercial insurance transactions of the same kind, size and relationship to commerce as those over which the Board regularly exercised its jurisdiction (R. 247a).

The Opinions in the Court of Appeals

The court below affirmed the Board's order. (R. 265a). In an opinion by Circuit Judge Prettyman, joined by Circuit Judge Danaher, the court held that the Board had properly construed Section 2(2) of the Act as placing labor organizations in their relations with their own employees in precisely the same status as other employers. (R. 263-264). It held that the Board did not abuse its discretion by applying to labor organizations the same jurisdictional criteria applicable to non-profit organizations generally (R. 264). The gist of the court's opinion appears in the following paragraph. (R. 264):

"The conclusions of the Board with reference to the non-profit character of these labor organizations, the reasoning with which it supports its criteria for jurisdiction, and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious. Our function in these areas of administrative discretion goes no further."

Circuit Judge Bazelon dissented. He viewed the specific reference to labor organizations in Section 2 (2) of the Act as differentiating them from non-profit organizations generally (R. 265). For that reason he believed the Board "erred in applying" to labor organizations the "standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction" (R. 265).

SUMMARY OF ARGUMENT

I

Upon the evidence introduced, the National Labor Relations Board had no alternative but to dismiss the complaints against the *amici curiae*. Congressional intent as to the kind of commerce encompassed by the Act and congressional intent as to the kind of activities of employers which it desired to reach both established that the activities of the labor organizations here involved were not covered by the National Labor Relations Act, as amended. The express statutory requirement of Section 302(c)(5)(B) of the Labor Management Relations Act that the persons selected by trustees to administer health and welfare funds must be neutral excludes application of the National Labor Relations Act to relationships between the Security Plan Office, its administrator Earhart and his employees.

A. The express provision in Section 2(2) of the National Labor Relations Act that labor organizations when acting in a capacity other than that of a labor organization shall be considered employers for the purposes of the Act, does not confer on the Board jurisdiction to proceed in such instances without regard to effect upon commerce. Section 10 (a), (b) and (c) of the Act empowers the Board to proceed only where the unfair labor practices charged affect commerce and directs the Board to dismiss all complaints where upon the preponderance of the evidence, no unfair labor practice affecting commerce has been established.

The finding of Chairman Farmer and Board Member Peterson that the record did not establish the jurisdictional prerequisite of effect on commerce is correct irrespective of whether or not the *amici curiae* fall

within the non-profit organization exclusion which these two Board members deemed applicable. The absence of any evidence that any of the activities of the *amici curiae* here involved related to employees of employers engaged in commerce within the meaning of the Act necessitated the finding that the requisite effect on commerce had not been established. The relationship to commerce of the employer of the employees whom the union represents or attempts to represent was the test of the Board's jurisdiction over labor organizations as such under both the original National Labor Relations Act and the Labor Management Relations Act. But even if the usual test applicable to determine jurisdiction over labor organizations did not apply, when the proceeding was against a labor organization qua employer, the evidence was equally insufficient to meet the jurisdictional test applicable to employers, namely that a stoppage of its operations by labor strife would burden or obstruct commerce. Even where a labor organization represents employees engaged in commerce it would be purely speculative and conjectural to suppose that a strike of office employees of a labor organization would have any effect on commerce via the employees of the employer engaged in commerce. The only possible effect of a strike of the office employees of the respondent unions discernible from the record in this case is on the flow of union dues from locals to parent bodies. This obviously is not the kind of effect on commerce to which the Act is applicable.

The finding of Chairman Farmer and Board Member Peterson that the record did not establish the jurisdictional prerequisite of effect on commerce is likewise proper on the basis upon which these two members

placed it, namely, that the traditional trade union activity of labor organizations fell in the category of non-commercial activities of non-profit organizations, which Congress intended to exclude from the Act as not affecting commerce. The legislative history of the Labor Management Relations Act establishes that Congress did not amend the Act to exclude non-commercial activities of non-profit organizations only because it considered that such activities did not affect commerce. In committee reports and on the floor of Congress it was stated that no one had ever regarded the non-commercial activities of non-profit organizations as commerce. Labor organizations are non-profit organizations. Their traditional trade union activities are not commercial or business ventures.

B. The determination of Board Member Murdock that a labor organization became an employer within the meaning of Section 2(2) of the Act only when it extended its activities beyond those traditional to trade unions and embarked upon a business or commercial enterprise, is proper. The legislative history shows that Congress was urged to include labor organizations in the definition of employer because otherwise they could employ workers in all sorts of business activities at a competitive advantage over other employers. The Committee report that labor organizations were included as employers only in the "extreme" cases where they acted as employers manifests the understanding that they did not act as employers within the meaning of the Act when engaged in usual trade union role.

The counterpart in industry of the employees here involved has never been regarded by trade unions generally, nor by Congress, nor by the Board, as within the protection of the National Labor Relations Act.

Office employees, such as secretaries and switchboard operators, serving management officials who make labor policy for industry, have always been excluded from the Act as confidential employees. Congress stated that this was the fact when it rejected proposals to write such express exclusions in the statute.

Serious constitutional questions would arise were a labor union required to hire or retain, on its collective bargaining staff, organizers, negotiators or assistants thereto, who were anti-union or pro-rival union. Just as churches and political parties have a constitutional right to hire only zealots for their causes, so a labor union in the choice of those who represent it in organizing, collecting dues, and negotiating with management has a constitutional right to insist on zealots for its particular brand of unionism. For the rights of freedom of speech and assembly guaranteed by the First Amendment encompass the right to form and operate as a trade union. Correlative thereto is the right to hire and pay for services essential to the functioning of the trade union.

C. If the health and welfare plans administered by the Security Plan Office and Earhart are financed in any respect by employers in an industry affecting commerce, Section 302 (c)(5)(B) of the Labor Management Relations Act requires that Earhart and his staff be neutral persons. This requirement of neutrality removes his staff from the protection of the National Labor Relations Act.

II.

Irrespective of whether the Board had power to assert jurisdiction over any of the *amici curiae*, the Board did not abuse its discretion in declining so to

do. The National Labor Relations Act empowers the Board to decline jurisdiction upon any non-arbitrary and non-discriminatory basis which the Board considers proper. All of the arguments which we have heretofore made to show that the *amici curiae* were beyond the jurisdiction of the Board, equally support a discretionary refusal by the Board to exercise jurisdiction.

The sole reason for singling out labor organizations for express mention in the definition of employer in Section 2(2) of the National Labor Relations Act was to be certain that they were excluded from the proscriptions which the Act directed at interference with self-organization. That, incidental to their mention for purposes of exclusion, it was deemed desirable to qualify the exemption so that in certain capacities labor organizations could be reached as employers, certainly affords no basis for inferring a Congressional intent to impose upon the Board a mandatory duty to proceed against labor organizations whenever they act in the non-exempted capacities. The statutory language places them in the same position as all other employers for purposes of the Board's exercise of discretion. If legislative history as to Congressional attitudes toward inclusion or exclusion were to be any guide, it would appear that labor unions would be among those against whom Congress was least concerned with proceeding.

Legislative intention with respect to inclusion within the Act affords no appropriate basis for fixing standards for the Board's appropriate exercise of its discretionary jurisdiction. Under such a test borderline cases where opinion as to inclusion or exclusion was divided or where specific mention was necessary to

avoid ambiguity, would assume a status directly the opposite of their real importance. The extensive legislative history as to whether employers with fewer than 10 employees should be included would, by this test, require the Board to exercise its jurisdiction over all small employers. Likewise the Board would be compelled to proceed in all cases arising in the territories.

It was entirely reasonable and proper for the Board to establish a jurisdictional standard under which the non-commercial activities of non-profit organizations are not deemed to have sufficient effect on commerce to warrant the Board's exercise of jurisdiction. This standard conforms to Congressional intent that the Board should not proceed in such cases. The determination that labor unions were subject to this standard was also reasonable and proper.

Any balancing of the factors relevant to the Board's exercise of its discretionary jurisdiction shows that the Board's failure to assert jurisdiction over the *amici curiae* was proper. On the one hand there is the Board's limited budget, comparatively small staff and large backlog of cases, with the resultant large areas of industry in which unfair labor practices having a substantial effect on commerce remain beyond the Board's exercise of jurisdiction. On the other hand, there is the absence of any discernible impact upon commerce of the activities of unions in relation to their own employees, the presence of strong non-legal deterrents from unfair treatment of their own employees by unions and the availability of interunion machinery for settling such disputes as are here presented.

Finally, the standards which the Taft-Hartley Act fixes in order to assure that the violently anti-union

employee shall not be discriminated against in employment, if applied to the personnel of organizational staffs of unions, could defeat the purposes of the Act. Just as the Board has held that industrial employers may staff their labor relations personnel with persons holding the management's labor viewpoint and need not bargain with a labor union engaged in a competing business, so the Board in the exercise of its discretion may properly decline to apply the Act to employees of a labor union who join a union engaged in a competing organizational drive.

ARGUMENT

I.

THE DETERMINATION BY A MAJORITY OF THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD THAT THE RECORD FAILED TO ESTABLISH THAT ANY OF THE AMICI CURIAE WAS SUBJECT TO THE JURISDICTION OF THE BOARD, RESTED UPON THE PROPER CONSTRUCTION OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The three members of the National Labor Relations Board who joined in the order dismissing all the complaints against the *amici curiae* were agreed the Congress did not intend for the Board to apply the Act to the relationships between a union and its employees hired solely in connection with traditional trade union activities. Two of the three, former Chairman Farmer and former Board Member Peterson, reached this result by examining legislative intent as to the type of commerce within the Act (R. 234a), while the third, Board Member Murdock, looked to legislative intent as to the type of employer within the Act (R. 236a-238a).

Former Chairman Farmer and former Board Member Peterson based their decision upon the legislative

history as to the scope of the phrase "affect commerce" in the Act (Section 10 (a), 29 U.S.C. 160 (a)). They read this legislative history as showing that Congress deemed that the transactions of non-profit organizations did not affect commerce except in those instances in which non-profit organizations engaged in purely commercial activities. Since labor organizations are non-profit organizations, the two above named former Board members found, that in the absence of any evidence of purely commercial activities on the part of the *amici curiae*, the record failed to establish the requisite "effect upon commerce within the meaning of the Act." (R. 234a.)

Board Member Murdock examined legislative history as to the intent of Congress when it excluded from the definition of employer in Section 2(2) of the Act (29 U.S.C. 152 (2)), "labor organizations (other than when acting as an employer)." He concluded therefrom that Congress did not intend in either the original National Labor Relations Act nor in the Labor Management Relations Act to regulate relations between unions and such employees as they utilize in their normal collective bargaining activities (R. 236a).

The practical consequences of the respective approaches of the three Board members, insofar as the application of the Act to trade unions is involved, are identical. Whenever a trade union embarks on a business venture it is, as to the employees engaged in such business venture, an employer within the meaning of the Act and the impact upon commerce of its activities in the business venture are to be judged by the same standards as are applicable to any industrial employer. But so long as a trade union confines itself to organizing and collective bargaining, it

is free to maintain a staff composed of zealots for its cause, with a correlative right to discriminate against those who are anti-union or pro-rival union, without thereby subjecting itself to charges before the National Labor Relations Board.

We believe that the legislation history sustains both the view that the relationship between a union and its staff engaged in traditional trade union activities does not affect commerce within the meaning of the Act and the view that so long as a trade union does not engage in a commercial enterprise, it is within the exemption of labor organizations from the definition of employer. We believe it is entirely immaterial in this case whether this Court agrees with both these views, or with one rather than the other. Indeed we believe that the activities of the *amici curiae* here involved have such a remote relationship to interstate commerce, that the finding that the record failed to establish the requisite "effect on commerce" (R. 234a), may properly be sustained and the judgment below affirmed without the necessity of this Court's deciding the broader questions which then Chairman Farmer and then Board Member Peterson, on the one hand, and Board Member Murdock, on the other hand, considered controlling.

A.

The Finding of Chairman Farmer and Board Member Peterson That the Record Failed to Establish That the Unfair Labor Practices Charged Affected Commerce Within the Meaning of the National Labor Relations Act, as Amended, Is Correct

1. **The specific inclusion of labor organizations in certain capacities within the definition of employer did not obviate the necessity for establishing as a prerequisite to Board jurisdiction that the alleged unfair labor practices affected commerce within the meaning of the National Labor Relations Act, as amended**

Former Chairman Farmer and former Board Member Peterson construed the National Labor Relations Act, as amended, as imposing on the Board the duty of making a determination in each case as to whether the operations of the employer involved affect commerce within the meaning of the Act. They specifically ruled in this case that the inclusion of labor unions, when operating in certain capacities, in the definition of employer did not remove from the Board the duty of examining whether the operations of the labor union affected commerce and on the basis thereof making a judgment as to whether the Board had jurisdiction. Thus then Chairman Farmer and then Board member Peterson stated (R. 233a):

"Demonstrably, the mere inclusion of labor unions in the statutory definition of 'employer' does not constitute a legislative ukase that, in all instances, their operations affect commerce * * *

"We consider the limited inclusion of labor organizations in the Act's definition of an 'employer' to be consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine

whether the operations of a union-employer, like any other employer, affect commerce within the meaning of the Statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act."

The use of the word "Demonstrably" which begins the above quotation has reference to Section 10 (a) of the National Labor Relations Act, as amended. That section constitutes the sole authority which the Board has to proceed in unfair labor practice cases. The relevant language of that section is the first sentence which reads as follows (Section 10 (a), 29 U.S.C. 160(a)):

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce."

Section 10 (b) in providing for the issuance of complaints by the Board, makes it a condition precedent thereto that there be a charge that some person has engaged or is engaging in "such unfair labor practice." The word "such" has reference to the limitation in Section 10 (a) that the unfair labor practice must be one "affecting commerce." Similarly in Section 10 (c) the Board's power to issue an order rests on its finding from a preponderance of the evidence taken before the Board that any person named in the complaint has engaged or is engaging "in any such unfair labor practice." Finally, and crucial to this case, is the direction in Section 10 (c):

"If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any *such* unfair labor prac-

tice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint." (Emphasis supplied.)

The word "such" preceding unfair labor practices, again obviously refers to the limitation in the empowering language of the first sentence of Section 10, that it must be an unfair labor practice affecting commerce.

The inclusion of a labor organization when acting as an employer, whatever the scope of the inclusion, does not serve to empower the Board to proceed against all labor organizations no matter how small they are nor how unrelated to commerce. Any such construction of the statute is expressly contrary to the specific language of Section 10. It finds no support in the language of the statute, the statutory scheme nor its legislative history.

When the then Chairman Farmer and then Board Member Peterson found that "effect upon commerce within the meaning of the Act—has not been established" (R. 234a), they had no alternative but to dismiss the complaints.

2. No evidence was introduced to bring any of the amici curiae within the statutory basis established by the Labor Management Relations Act for exercise by the Board of jurisdiction over labor organizations, namely, representation of, or attempt to represent, or induce action by, employees of an employer whose operations affect commerce within the meaning of the Act

The original National Labor Relations Act did not subject labor organizations as such to the processes of the Board. The only time labor organizations actually came before the Board under that Act they were either petitioning for an election to establish

themselves as the representative of employees of employers or charging that an employer had committed unfair labor practices. The test of jurisdiction was whether the employer whose employees they sought to represent or the employer charged with unfair labor practices, as the case might be, was engaged in commerce within the meaning of the Act.

When Congress amended the National Labor Relations Act and made labor organizations as such subject to unfair labor practice complaints, it retained as the sole test of jurisdiction the relationship to commerce of the activities of the employer whose employees had allegedly been involved in the union's commission of unfair labor practices.³ In all of the provisions of the Labor Management Relations Act which purport to rest upon the commerce powers of Congress,⁴ jurisdiction over labor organizations is

³ At the opening of the hearing before the Trial Examiner in this case, when counsel for the General Counsel indicated that he claimed jurisdiction over the locals because they represented employees of employers of interstate firms (Tr. 34-35), the Trial Examiner asked if in this regard he was suggesting the applicability of jurisdictional tests in "C-B" cases, the letter designation which the Board includes as part of the docket number of complaint cases under Section 8 (b) of the Act. The counsel for the General Counsel said he was (Tr. 35). He likewise answered in the affirmative at the oral argument before the Board a query of Board Member Peterson if "the theory of counsel for the General Counsel at the outset was to prove jurisdiction on a basis similar to that adopted in the ordinary 8 (b) type of case" (Tr. Oral Argument, p. 64). Cf. *In re International Brotherhood of Teamsters (Jamestown Builders Exchange)*, 1951, 93 NLRB 386; *In re Denver Building and Construction Trades Council (B. W. Fellers Inc.)*, 1950, 88 NLRB 1321; *In re Denver Building and Construction Trades Council (William G. Churches)*, 1950, 90 NLRB 378.

⁴ Section 304 of the Labor Management Relations Act, amending the Federal Corrupt Practices Act (18 USC 610), a criminal

carefully delimited to situations in which the employees whom the union represents or seeks to represent, or seeks to induce into action, are employed in an industry affecting commerce within the meaning of the Act.

In Section 301 (a) of the Labor Management Relations Act (29 U.S.C. 185 (a)) it is provided that

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, or between any such labor organizations, may be brought in any district court" (Emphasis supplied).

In Section 301 (b) of the Labor Management Relations Act (29 U.S.C. 185 (b)) it is provided:

"Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents" (Emphasis supplied).

The provisions of the Labor Management Relations Act regulating health and welfare funds and barring bribery of, or shakedowns by, union representatives are similarly limited. The applicable section, Section 302 (29 U.S.C. 186) begins:

"(a) It shall be unlawful for any employer to pay or deliver, or agree to pay or deliver, any money or other thing of value to any representa-

section, not involving administration by the National Labor Relations Board, appears to be the only section applicable to all labor organizations as distinguished from those representing or inducing action by employees employed in industry affecting commerce within the meaning of the Act.

tive of any of his employees who are employed in an industry affecting commerce.

*“(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees * * *” (Emphasis supplied).*

The provisions which give injured parties a right to recover monetary damages for injuries arising from proscribed “boycotts and other unlawful combinations” are found in Section 303 (29 U.S.C. 187), which begins:

*“(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in * * *” (Emphasis supplied).*

The repeated statements in committee reports and on the floor of Congress that the above quoted Section 303 gives damages in precisely the same situation as gives rise to an unfair labor practice proceeding under Section 8 (b)(4) of the National Labor Relations Act, as amended,⁵ show beyond any question that Congress assumed that under the National Labor Relations Act, as amended, the jurisdictional test applicable to all labor organizations brought before the Board would be the same as it had been under the original National Labor Relations Act, namely, whether the employees whom they represented or sought to represent

⁵ H. Conf. Rept. No. 510, 8th Cong., 1st Sess., on H.R. 3020, p. 67, reprinted in Legislative History of the Labor Management Relations Act (Gov't Print. Off., 1948), vol. 1, p. 571; 93 Cong. Rec. 4858, reprinted 2 Leg. His. LMRA 1371.

or induce to action were employed by an employer whose activities affected commerce within the meaning of the Act.

Nowhere in either the original National Labor Relations Act or in the amendments thereto is there any suggestion that Congress meant to reach unions on the basis of their size, or the amount of dues their locals sent to internationals across state lines, or the presence of locals in several states, or the crossing of state lines by organizers, negotiators, officers or other agents of the union. Rather the contrary is indicated by the repeated instances in which Congress so carefully made the applicability of the Act to a union depend upon the employment in an industry affecting commerce of the employees whom the union represents or seeks to represent or induce to action.

In the instant case, with respect to the jurisdiction of the Board to proceed against the Teamster locals, the complaints alleged that they represented employees of employers engaged in commerce within the meaning of the Act (R. 13a, 32a, 33a). In their answers the Teamsters locals denied that the employees whom they represented were employed by employers who were engaged in commerce within the meaning of the Act (R. 18a, 64a, 73a). At the opening of the hearing before the Trial Examiner, counsel for the General Counsel stated, as one basis of jurisdiction over the Security Plan Office and Earhart, its administrator, that he relied upon the payment of health and welfare claims to employees of employers who were engaged in commerce (Tr. 46).

No evidence was introduced at the hearing to show that any of the respondents represented employees of employers engaged in commerce within the meaning of

the Act. Nor was there any evidence that any of the employers party to the health and welfare plans administered by the Security Plan Office and Earhart were engaged in commerce within the meaning of the Act.

Accordingly we submit that the failure of the General Counsel to offer any evidence that the labor organizations here involved represented employees of employers engaged in commerce within the meaning of the Act required a dismissal upon jurisdictional grounds. The allegations of the complaints that the respondent locals did represent such employees had been denied. A fact issue requiring proof was tendered. There was a complete failure of proof. The Board could not properly do other than find as did Chairman Farmer and Board Member Peterson "that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been established." (R. 234a).

We do not mean to suggest that once it is established that a labor organization represents employees of an employer engaged in commerce within the meaning of the Act, that the Board may then properly proceed against the labor organization either as an employer or as a labor organization. As we shall show in the succeeding argument, it would still be necessary to establish that the alleged unfair labor practices themselves "affected commerce" by causing, or threatening to cause, a stoppage of the free flow of commerce, and that the activities of the union were not exempt as non-profit, non-commercial activities. But in the instant case, the entire absence of the basic proof of representation of employees employed by an employer

engaged in commerce, would seem to dispose of the case without the necessity of considering any further questions.

3. No evidence was introduced to show that the unfair labor practices charged against the amici curiae labor organizations as employers affected commerce within the meaning of the statutory basis established by the National Labor Relations Act, as amended, for the exercise by the Board of jurisdiction over employers, namely, that a stoppage of the employer's operations by reason of labor strife would burden or obstruct commerce or the free flow of commerce
- a. There was no evidence that a strike by office employees of the respondent unions would disrupt or burden commerce or any flow of commerce of any kind other than the flow of union dues across state lines

Irrespective of whether or not the labor union respondents were engaged in representing employees of employers engaged in interstate commerce, a cessation of their traditional trade union activities could not affect commerce within the meaning of the Act. If none of the employers whose employees were represented by the unions were engaged in commerce within the meaning of the Act, a stoppage of union activities would have no effect on commerce via the effect on such employers. But even if the unions represented employees of employers engaged in commerce, it is impossible to see how a stoppage of the unions' activities would have any effect on commerce by reason of some supposed effect on those employers. Although at the opening of the hearing before the Trial Examiner this issue was raised, no evidence showing any effect on commerce was introduced.

The Trial Examiner indicated that he was troubled as to how a strike of employees of a labor organization could affect operations of the employers whose employees the labor organization represented (Tr. 21, 35). He stated (Tr. 21):

"I'm somewhat dubious about the commerce facts insofar as they relate to concerns with whom the Union has contractual negotiations. I think I would want to be shown where a dispute involving the office employees of Local 206 would have an effect upon these other contractual operations."

Also see the Trial Examiner's query in the following colloquy with Mr. Tillman, the representative of the General Counsel at the hearing (Tr. 35-36):

"Mr. Tillman: Well, it comes to the argument that I was just making that it's possible the Board may assert jurisdiction where a local represents employees of interstate firms, but will not assert it where they represent employees of non-interstate firms * * *

* * *

"Trial Examiner: You're drawing an analogy to a CB case where it will take jurisdiction over a union because the operations of the employer are in interstate commerce?

"Mr. Tillman: Yes, it's something of an analogy to that; * * *

"Trial Examiner: I am still troubled by your making that hurdle * * *

"Mr. Tillman: You mean as to the possible effect on these employers?

"Trial Examiner: The effect on these other employers of a dispute involving office employees in Local 206.

"Mr. Tillman: Well, I'm in the position of a layman there. It would be hard for me to know, for example, what effect it would have on the operations of the Teamsters' organization if the girls suddenly went on strike and they couldn't get any office help."

It will be noticed that whereas the Trial Examiner assumed it would be necessary to show an effect on

employers of employees represented by the union, the representative of the General Counsel directed his answer to effects on operations of the union. We believe this evasion reflects the entirely inconsequential effect which a strike by employees of a union would have on employers of the union's members.

Neither the petitioner here, nor the dissenting members of the Board, nor the General Counsel for the Board, have shown any respect in which a strike by office employees of the labor unions here involved, could have any substantial impact upon commerce within the meaning of the Act. They have neither introduced in evidence nor pointed to any facts of which the court could take judicial notice which even suggest that a stoppage of traditional trade union activities by internal disputes in the union can have the kind and quality of an impact upon commerce with which Congress was concerned when it enacted the National Labor Relations Act. There has been no history of strikes by employees of labor organizations. What effects, if any, such a strike could have are purely conjectural.

The theory of the effect of strikes on commerce which constitutes the basis for the jurisdiction of the National Labor Relations Act is fully set forth in the findings set out in Section 1 of the Act. This Court has often had occasion to advert to those findings and to restate the theory in its decisions. This theory, of course, is that a strike stopping the operations of an industrial employer shuts off the inflow of raw materials to his plant and the flow of finished goods from the plant. An employer engaged directly in commerce or receiving or producing goods which cross state lines affects commerce when he denies his employees the

right to organize and bargain collectively, because such a denial has led and tends to lead to a stoppage of work by them with the resultant impediment to commerce. *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 1937, 301 U.S. 1, 22 n. 2, 41-43; *N.L.R.B. v. Friedman-Harry Marks Co.*, 1937, 301 U.S. 58, 72-73; *Santa Cruz Packing Co. v. N.L.R.B.*, 1938, 303 U.S. 453, 463-466. An interruption in the usual operations of a union from internal union disputes which were not the kind which would involve employees of industrial employers in work stoppages would not affect the flow of commerce. An interruption in the operations of a union by external employer forces threatens commerce because the employer's employees may resent the interference and strike. Neither the petitioner, the General Counsel, nor the dissenting members of the Board have ever advanced any explanation as to how labor strife on the part of the employees here involved could effect commerce within the meaning of the Act.

b. A stoppage of the flow of union dues across state lines is not the kind of an effect on commerce at which the National Labor Relations Act, as amended, is directed.

The only possible effect upon commerce of a strike of the employees of the respondent unions which appears from the record, would be a stoppage of transmission of union dues across state lines. The amounts of dues transmitted across state lines to and from the Teamsters Building in Portland, Oregon during the year preceding the hearing were \$46,786 in per capita taxes sent by respondent Local 206 to the International Teamsters Union in Washington, D. C., \$7,258 similarly sent by respondent Local 223, and \$8,609 received by Joint Council of Drivers No. 37 from locals in the State of Washington (R. 86a).

Everything which we state in our next subsection of this brief in support of our argument that Congress did not intend the Act to apply to the non-profit organizations so long as they do not engage in business enterprises, demonstrates that an interruption in the flow of union dues across state lines is not the kind of commerce Congress encompassed within the Act. In *Polish National Alliance v. N.L.R.B.*, 1944, 322 U.S. 643, 644-645, 648, this Court showed its understanding that the interstate transmission of money, letters and personnel was not the kind of commerce with which the Act dealt. This Court pointed out that for the preceding five years Polish National had admitted no more "social members" but sold only life insurance (322 U.S. at 644-645). And it held that the mere fact Polish National engaged in cultural and fraternal activities did not subordinate its extensive business activities to such insignificance as to withdraw them from regulation by the National Labor Relations Board (322 U.S. at 648).

In the instances with which Congress was concerned when it considered non-commercial activities of non-profit organizations, dealings between non-profit organizations and non-members involving the payment of money for services or goods were often involved. E.g., the case of *N.L.R.B. v. Central Dispensary*, App. D.C., 1944, 145 F. 2d 852, certiorari denied, 324 U.S. 847, which provoked the Congressional clarification of its intent respect non-profit organizations (see legislative history collected, pp. 47-50 *infra*), involved the sale of medical services and supplies for a revenue in excess of \$600,000 a year (145 F. 2d at p. 853). Here the unions do not receive revenue for the sale of goods or services to others. Their interstate financial

transactions consist merely of collecting and transmitting dues from their own members. Irrespective of the correctness of our argument that non-commercial activities of non-profit organizations are not commerce within the meaning of the Act, certainly the collection of dues from members of a welfare organization and transmission of dues to the parent organization was not the kind of commerce with which Congress was concerned when it enacted the National Labor Relations Act.

4. Congress did not intend that the activities of nonprofit organizations not engaged in commercial enterprise should be considered as affecting commerce within the meaning of the Act.

The language in Section 1 of the original National Labor Relations Act, and again in Section 1 of the Labor Management Relations Act strongly indicates that the law was directed solely at business and industrial enterprises. Section 1 of the National Labor Relations Act begins (29 U.S.C. 151):

"The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by

"(a) impairing the efficiency, safety or operation of the instrumentalities of commerce;

"(b) occurring in the current of commerce;

"(c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or

“(d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.”

The section continues stating that inequality of bargaining power tends to aggravate “recurrent business depressions” and prevents “stabilization of competitive wage rates and working conditions within and between industries.” The section recites that protection by law of the right to organize and bargain collectively removes sources of “industrial strife” by encouraging the friendly adjustment of “industrial disputes.”

Section 1 (b) of the Labor Management Relations Act (29 U.S.C. 141 (b)) begins its declaration of policy as follows:

“Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized * * *”

Such phrases as “industrial strife or unrest”, “instrumentalities of commerce”, “flow of raw materials or manufactured or processed goods from or into the channels of commerce”, “business depressions”, “production of articles and commodities for commerce”, “within and between industries”, “industrial disputes”, are inapplicable to the non-commercial activities of non-profit associations. In several state court decisions construing state labor relations acts modelled upon the original National Labor Relations Act the use of such phrases as those above quoted afforded in large measure the basis for construing the state act as inapplicable to nonprofit

organizations. Congress was familiar with these decisions at the time it considered and decided that the original National Labor Relations Act was already inapplicable to the noncommercial activities of non-profit organizations and hence need not be amended to exclude them.⁶ The National Labor Relations Board has cited these decisions in dismissing proceedings against non-profit organizations.⁷

In *Petition of Salvation Army*, 1944, 349 Pa. 105, 36 A. 2d 479, the Supreme Court of Pennsylvania held that the Pennsylvania State Labor Relations Board had no power to conduct an election among hotel and restaurant employees of The Evangeline Residence in Pittsburgh which the Salvation Army operated as a home for young working girls and out-of-town school girls. The fees charged were estimated to cover the costs of operations but the operation was not conducted for profit. The Supreme Court of Pennsylvania stated (36 A. 2d at 481):

"In the light of these plainly expressed legislative findings declaring the necessity for the law and the mischief to be remedied, we are drawn irresistibly by the language used to the conclusion that the Legislature meant to limit its provisions to industrial disputes. The phrases: 'within and between industries', 'sweat shops', 'production

⁶ The legislative history is set out in full pp. 47-50, *infra*. For Congressional acquaintance with these decisions see Statement of John H. Hayes, President of the American Hospital Association, Hearings before Senate Committee on Labor and Public Welfare, 80th Cong., 1st Sess., pp. 2181, 2182; H. Rept. No. 245 on H.R. 3020, 80th Cong., 1st Sess., p. 12, reprinted 1 Leg. His. L.M.R.A. 303; 93 Cong. Rec. A1009, reprinted 1 Leg. His. L.M.R.A. 580.

⁷ E.g., *The Trustees of Columbia University*, 1951, 97 NLRB 424, 427, n. 16.

and consumption', 'business depressions' and 'industrial strife and unrest' certainly do not relate to charitable or eleemosynary associations. It appears too plain for argument that the Legislature intended all of the statutory provisions and regulations of the Act to apply exclusively to industrial disputes.

* * *

"We do not mean to decide or imply that whenever a non-profit organization does enter an industrial field, even though its profits may be devoted to charity, it is exempted from taxes and regulations such as the Labor Relations Act to which any other industry or business is subjected. Compare: *Y.M.C.A. of Germantown v. Philadelphia*, 323 Pa. 401, 187 A. 204, in which the Y.M.C.A. rented commercially part of its premises to lodgers; *Contributors to the Pennsylvania Hospital v. County of Delaware, et al.*, 169 Pa. 305, 32 A. 456, in which a private hospital operated farms for profit; *American Sunday School Union v. Philadelphia*, 161 Pa. 307, 29 A. 26, 23 LRA 695, in which a Sunday school union conducted a book store for profit; *Trustees of Columbia University, etc. v. Herzog*, Misc. 46 NYS 2d 130, in which a university owned and operated an office building."

Similarly, in *St. Luke's Hospital v. Labor Relations Commission*, 1946, 320 Mass. 467, 70 N.E. 2d 10, the court in holding the Massachusetts Labor Relations Act inapplicable to a hospital, said (70 N.E. 2d at 12-14):

"The policy of that act, as already intimated, is the promotion of peace and the prevention of strikes in order that there may be no obstructions to the free flow of industry and trade * * * The act, however, does not include all employees working in this Commonwealth, apart from those

covered by acts of Congress, anymore than does the National Labor Relations Act. * * * include any except those engaged in pursuits where a strike would affect interstate commerce. * * * Our act impliedly excludes from the Commission jurisdiction over matters not affecting industry and trade. * * *

"A hospital, like the plaintiff, whose doors are wide open to those needing medical and surgical treatment for which no charge is made to those unable to pay, and which depends for its support and maintenance upon the fees of patients and gifts and donations and cares for recipients of public welfare sent to it by the city at reduced rates and is conducted in the interests of the general public and strictly as a non-profit organization is a public charity. * * * Such a hospital is not conducting a business or commercial enterprise. It is not engaged in industry or trade. * * * We need not consider what the relationship of the hospital to industry and trade would be if it were engaged in commercial undertakings, as the care and letting of realty or the conduct of a mercantile establishment, for the benefit of the hospital and employed persons in such undertakings. * * *

"But it is urged by the Commission that a hospital comes within the definition of an employer, and is not expressly exempted * * * But the entire chapter in which the definition appears must be construed as a whole, and the question is not whether a hospital is expressly exempted but whether a hospital comes within the sweep of the chapter in the light of its declared underlying and predominant aim and object. * * *

"* * * A strike would not affect industry or trade in any of the four ways mentioned in section 1, which defines the policy of the act. The policy limits the scope of the act and clearly shows that a hospital which is organized and conducted as

public charitable institution is not covered by the act. This conclusion is in accord with *Jewish Hospital of Brooklyn v. Doe*, 252 App. Div. 581, 300 N.Y.S. 1111; * * *

The "four ways" in which a strike would affect industry or trade, set forth in section 1 of the Massachusetts State Labor Relations Act, are exactly the same "four ways" set forth in the first paragraph of Section 1 of the National Labor Relations Act and quoted above. Cf. Annotated Laws of Massachusetts, Ch. 150 A, Sec. 1 with 29 U.S.C. 151.

To the same effect as the foregoing cases see *Western Pennsylvania Hospital v. Lichliter*, 1941, 340 Pa. 382, 17 A. 2d 206; *Philadelphia v. Lichliter* (Pa. Ct. of Com. Pleas, 1944), 55 Dauph. Co. 184; *Washington & Jefferson College v. Gifford* (Pa. Ct. of Common Pleas, 1944), 55 Dauph. Co. 182. Cf. *Jewish Hospital of Brooklyn v. Doe* (Sup. Ct., App. Div. 2nd Dept. 1937), 252 App. Div. 581, 300 N.Y.S. 1111; *American Society for Prevention of Cruelty to Animals v. Geiger*, 1955, 208 Misc. 29, 141 N.Y.S. 2d 610.

Under the original National Labor Relations Act the Board had exercised jurisdiction in one case involving a nonprofit hospital. *N.L.R.B. v. Central Dispensary*, App. D.C. 1944, 145 F. 2d 852, certiorari denied, 324 U.S. 847. During the hearings which preceded the enactment of the Labor Management Relations Act, Congress received requests from hospitals that the Act be amended to exempt nonprofit hospitals. Hearings before Senate Committee on Labor and Public Welfare, 80th Con., 1st Sess., pp. 2181, 2241. The Hartley Bill as reported out of Committee and as passed by the House of Representatives

would have amended the National Labor Relations Act to exclude from the definition of employer in Section 2 (2) the following (H.R. 3020, 80th Cong., 1st Sess., as reported, reprinted 1 Leg. His. L.M.R.A. 34; H.R. 3020, 80th Cong., 1st Sess., as passed House, reprinted 1 Leg. His. L.M.R.A. 161):

“any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.”

The report accompanying this amendment stated (H. Rept. No. 245 on H.R. 3020, 80th Cong., 1st Sess., p. 12, reprinted 1 Leg. His. L.M.R.A. 303):

“Churches, hospitals, schools, colleges, and societies for the care of the needy are not engaged in ‘commerce’ and certainly not interstate commerce. * * * The bill therefore excludes from the definition of ‘employer’ institutions that qualify as charities under our tax laws. In this respect the bill is consistent with similar laws in a number of States, notably New York, Pennsylvania and Wisconsin.”

The Senate Committee rejected this amendment, not because it disagreed with it, but because it regarded it as unnecessary. This is apparent from the statement made by Senator Taft on the floor of Congress when Senator Tydings proposed on the floor to restore in part the exemption adopted by the House but rejected by the Senate Committee. Senator Taft stated

(93 Cong. Rec. 4997, reprinted 2 Leg. His. L.M.R.A. 1464):

"The committee considered this amendment, but did not act on it, because it was felt it was unnecessary. The committee felt that hospitals were not engaged in interstate commerce, and that their business should not be so construed. We rather felt it would open up the question of making other exemptions. That is why the committee did not act upon the amendment as it was proposed."

Senator Tydings agreed with Senator Taft that neither a hospital nor any other nonprofit organization, so long as it was not operating a commercial enterprise, was engaged in commerce within the meaning of the Act. He so stated repeatedly (93 Cong. 4997, reprinted 2 Leg. His. L.M.R.A. 1464):

"Mr. President, I appreciate the reasons given why the committee did not act on it. I think we all realize that hospitals that are working on a nonprofit basis are not engaged in interstate commerce * * *

* * *

"It simply makes a hospital not an 'employer' in the commercial sense of the term. It is not a business operating on a profit basis."

Speaking in answer to a question about the right of nurses to organize, Senator Tydings stated (93 Cong. Rec. 4997, reprinted 2 Leg. His. L.M.R.A. 1465):

"They should not have to come to the National Labor Relations Board, as in the case of ordinary business concerns. They are not in interstate commerce. * * * A charitable institution is away beyond the scope of labor-management relations in which a profit is involved."

Senator Tydings nevertheless insisted it would be helpful to have a specific exemption of nonprofit hospitals and the Senate adopted his amendment (93 Cong. Rec. 4997, reprinted 2 Leg. His. L.M.R.A. 1465).

The conference report again made it plain that Congress did not regard any nonprofit organization as subject to the Act so long as it confined itself to non-commercial endeavors. Thus House Conf. Rept. No. 510, 80th Cong., 1st Sess., on H.R. 3020, p. 32, reprinted 1 Leg. His. L.M.R.A. 536, stated:

"The conference agreement follows the * * * Senate amendment in the matter of exclusion of nonprofit organizations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of such organizations or of their employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act."

Since the enactment of the Labor Management Relations Act, the National Labor Relations Board has consistently dismissed all complaints against nonprofit organizations, unless they were engaged in a business venture. In doing so it has reviewed the legislative history above recited and stated (*The Trustees of Columbia University*, 1951, 97 N.L.R.B. 424, 427):

"Whether or not this language provides a mandate, it certainly provides a guide."

In addition to the *Columbia University* case, the Board has similarly dismissed in *Lutheran Church, Missouri Synod*, 1955, 109 N.L.R.B. (radio station operated on a nonprofit and noncommercial basis); *Armour Research Foundation*, 1954, 107 N.L.R.B. 1052, 1053 (only 27% of the foundation's work was commercially sponsored); *Philadelphia Orchestra Association*, 1951, 97 N.L.R.B. 548, 549.

For some reason some members of the National Labor Relations Board have assumed that the House Conference Report had been referring to prior Board practice when it stated that "only in exceptional circumstances and in connection with purely commercial activities" had nonprofit organizations "been considered as affecting commerce." In this regard see the *Columbia University* case (97 N.L.R.B. at 427) where it is stated:

"Regardless of whether or not the conference report literally recites the Board's practice prior to the amendment of the Act, it does indicate approval of and reliance upon the Board's asserting jurisdiction over nonprofit organizations 'only in exceptional circumstances and in connection with purely commercial activities of such organizations.'"

Actually, as indicated by the above quoted query as to whether the report "literally recites" the Board's prior practice, the Board had never prior to the enactment of the Labor Management Relations Act formulated any such a policy. We do not read the Conference Report as having any reference to any prior practice of the Board. Rather every indication from the language used in the report and from similar references throughout the legislative history of the

Labor Management Relations Act, is that Congress meant that neither Congress nor the courts had considered nonprofit noncommercial activities to affect commerce. The dichotomy between commercial and noncommercial activities of nonprofit organizations does not appear in prior Board decisions nor in any statements made to Congress by representatives of the Board. Instead it seems to have come before Congress by way of the *Massachusetts* and *Pennsylvania* cases, quoted above, which were called to the attention of Congress (see footnote 6, p. 44, *supra*).

Nothing in the legislative history suggests to us that Congress intended that the Board exercise a discretionary jurisdiction over the noncommercial activities of nonprofit organizations. On the contrary all the legislative history is consistent only with the proposition that Congress did not believe the Board had any jurisdiction in such instances because no commerce was involved. Every indication is that Congress would have written in such an amendment had it had the slightest notion that anyone would regard these activities as within the Board's jurisdiction. Congress was certain the amendment was useless and might prove harmful by creating the inference that some noncommercial activity not encompassed by the amendment remained subject to the Board's jurisdiction.

Accordingly it must be concluded that the Board has no discretionary jurisdiction over the noncommercial activities of nonprofit organizations. The Board has no power to proceed because of the absence of the requisite effect on commerce.

5. The *amici curiae* were properly regarded by Chairman Farmer and Board Member Peterson as nonprofit organizations not engaged in commercial ventures within the Congressional intent that the activities of such organizations should not be considered as affecting commerce within the meaning of the Act

The respondent labor organizations are all unincorporated associations organized for purposes other than the making of profit. Labor unions have uniformly been recognized by Congress as nonprofit organizations. The House Report No. 245 on H.R. 3020, 80th Cong., 1st Sess., p. 12, reprinted 1 Leg. His. L.M.R.A. 303, explained that its listing of organizations to be excluded as "not engaged in 'commerce' and certainly not interstate commerce," consisted of the "institutions that qualify as charities under our tax laws." Labor organizations are exempted from taxation by Section 501 (c)(5) of the Internal Revenue Code of 1954, which in subsection (3) exempts "any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual" (26 U.S.C. 501). Similar exemptions of both labor organizations and substantially the same group of religious, charitable, scientific, literary and educational organizations have been present in our federal internal revenue codes at least since 1939. See Section 101 (1) and (6) of the 1939 Internal Revenue Code.

The respondent Building Association is organized as a nonprofit corporation (R. 86a-87a). Its only function is to hold title to a small office building used only by labor organizations or the health and welfare

plans (R. 87a). All of its stock is owned by six Teamster locals (R. 86a-R. 87a). Thus it too is a nonprofit organization not engaged in any commercial activity. Under federal tax laws the same exemption applicable to labor organizations and charities applies to a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses to an organization which itself is exempt. Section 501 (c)(2) of the Internal Revenue Code of 1954. Section 101 (14) of the Internal Revenue Code of 1939.

Similarly the Security Plan Office and Earhart, its administrator, are engaged solely in a nonprofit noncommercial activities. The same exemption from federal tax laws is applicable to both associations and trusts administering health and welfare plans in which the funds are contributed by employers and the benefits paid to employees. Section 501 (3) and (9) of the Internal Revenue Code of 1954; Section 101 (6) and (16) of the Internal Revenue Code of 1939.

Quite aside from federal tax laws all the *amici curiae* are generally considered in legal and lay parlance alike as nonprofit organizations not engaged in business enterprises. No plausible reason has been advanced for overturning the determination of then Chairman Farmer and then Board Member Peterson that all of the *amici curiae* are nonprofit organizations not engaged in any commercial enterprises and hence their activities do not affect commerce within the meaning of the Act. There was no evidence offered which in any way contradicted the finding made by these two Board members that the basic aim of all the

amici curiae was to improve the "working conditions of workers, increase their job security, and otherwise promote their general welfare" (R. 233a).

B.

The Determination of Board Member Murdock That a Labor Organization is an Employer Under Section 2 (2) of the National Labor Relations Act Only With Respect to Its Commercial, as Distinguished From Its Traditional Trade Union, Activities, Is Correct

The instant case was the first time the Board was called upon to decide a case in which an organization which came within the definition of "labor organization" in Section 2 (5) of the Act, would have been required to come within the definition of "employer" in Section 2 (2) of the Act, before the Board would have power to act.⁸ Section 2 (2) of the Act, in respect here pertinent, provides:

"The term 'employer' * * * shall not include * * * any labor organization (other than when acting as an employer) * * *."

Based upon the language of this section, the structure of the statute, and its legislative history, Board Member Murdock concluded that (R. 236a):

"Congress did not intend, either in the Wagner Act or the Taft-Hartley Act, to regulate relations between unions and such employees as they

⁸ *Air Line Pilots Assn.*, 1951, 97 N.L.R.B. 929 did not present this issue. As the Board pointed out in footnote 2, page 929: "The Employer is not a 'labor organization' within the meaning of Section 2 (5) of the Act; its participants or members are not 'employees' within the meaning of Section 2 (3), because they are employed by airlines which are subject to the Railway Labor Act, and it exists for the purpose of dealing with persons which are not 'employers' within the meaning of Section 2 (2)."

utilize in their normal collective bargaining activities. When a union leaves its normal role as a collective bargaining agency, and embarks on a commercial enterprise, however, it obviously cannot carry into that field its immunity as a collective bargaining agency."

In his concurring opinion Board Member Murdock relied primarily upon three bases in support of his reading of Section 2 (2):

First, he quoted from the Senate Report on the bill which became the original National Labor Relations Act the explanation of the reference to labor organizations in Section 2 (2) in which the parenthetical phrase is characterized as applicable only to the "extreme" cases where unions act as employers (R. 237a). Board Member Murdock pointed out that the use of the word "extreme" must have reference to instances where "unions have departed from their traditional role and embarked on commercial enterprises * * * where they have employees in the same context as any other industrial employer" (R. 238a).

Second, Board Member Murdock relied upon "the admitted—and often-criticized—fact, that the Wagner Act was intended to regulate employers and unions in the interest of employees and unions—not to regulate unions as well" (R. 238a).

Third, Board Member Murdock relied upon the establishment of a full regulatory code for labor organizations in the Taft-Hartley Act, which proscribed their "causing or attempting to cause" discriminatory employment practices only as to other employers. In this regard Board Member Murdock stated (R. 238a):

"The Taft-Hartley Act, however, regulated unions as well as employers. But nowhere in its language or its legislative history is there the slightest indication that Congress intended to regulate unions in relation to their own ordinary employees under the 8 (a) sections of the Act. Congress specified the proscribed union unfair labor practices in Section 8 (b) of the Act, which are pertinent in relation to employees of other employers rather than in the context of their own ordinary employer-employee relations. Thus, for example, in Section 8 (b)(2), unions are prohibited from 'causing or attempting to cause' other employers to discriminate against their employees, but unions are not forbidden to discriminate against their own employees. The specification in Section 8 (b) of what are unfair labor practices by unions necessarily excludes others not mentioned, under well established principles of statutory construction."

Each of the three foregoing analyses of the statute and its legislative history is entirely accurate. Additional materials in the legislative history not adverted to by Board Member Murdock reinforce his analyses.

1. The legislative history of Section 2 (2) of the National Labor Relations Act establishes that the parenthetical expression, which has the effect of subjecting a labor organization to the jurisdiction of the Board when it is acting as an employer, was inserted solely for the purpose of reaching unions when they operate businesses or engage in similar commercial transactions

Labor organizations were excluded from the definition of "employer" in the first bill introduced by Senator Wagner in 1934. S. 2926, 73rd Cong., 2d Sess., Section 3 (2), reprinted Legislative History of the National Labor Relations Act, 1935 (Gov't Print. Off., 1949), vol. 1, p. 2. During the hearings on this

bill in 1934 this exclusion was criticized from two different points of view. In neither instance did the witnesses so much as hint that they were concerned with the rights of employees of labor organizations engaged solely in traditional trade union activities. First, and except in two instances, all of the criticism came from those who opposed a "one-sided" regulation of employers and desired a comprehensive code establishing union as well as employer unfair labor practices along the lines now embodied in the Taft-Hartley Act. The exclusion of labor unions from the definition of "employer" was admittedly a legislative device to assure that no charges of interference with full freedom not to organize or to join unions of their own choice would be levelled at unions based on their activities in picketing, striking or boycotting. The removal of this exclusion was therefore one aim of those who wanted to prohibit "coercion or intimidation from any source." Their arguments show they were not even directing their remarks to the rights of employees of unions, whether engaged in commercial activities or not. For instance, Harold Edwards testifying in opposition to the bill as the representative of a group of employers expressed their view as follows (Hearings before the Senate Committee on Education and Labor, on S. 2926, 73rd Cong., 2d Sess., p. 951, reprinted 1 Leg. His. N.L.R.A. 1935, p. 989):

"the exemption of 'any labor organization' as an employer is unfair * * *

⁹ The language quoted is from the amendment to Section 7 proposed by Senator Tydings which went to a vote on the floor of the Senate and was defeated during the formal debates preceding adoption of the original Wagner Act. 79 Cong. Rec. 7653-7675, reprinted 2 Leg. His. N.L.R.A. 1935, pp. 2357-2400.

“* * * penalties should be imposed on unfair labor practices from any source and not exclusively on employers.”

Guy L. Harrington, representing the National Publishers Association, stated (Hearings, *op. cit.*, p. 460, reprinted 1 Leg. His. N.L.R.A. 1935, p. 494):

“Even the definition of employer in section 2 (a) excludes labor organizations, thus exempting them from possible punishment for unfair labor practices. While laying down specific rules of fair practice for employers, none are given for employees.”

Charles R. Hook, president of American Rolling Mill Co., said (Hearings, *op. cit.*, pp. 752-753, reprinted 1 Leg. His. N.L.R.A. 1935, pp. 790-791):

“Section 3 (2) of the Wagner bill specifically excepts labor organizations and their officers or agents under the definition of an employer and thereby grants them immunity with respect to practices classed as unfair on the part of all other employers and violation of which submits the other employers to the liability of fine and imprisonment. By implication, it makes a gentleman of one and a criminal of the other.

“I submit to your judgment, would it be fair, if you were going to set up rules for a contest in any sport, that the rules of the game apply to only one side? How long would the sense of justice of the audience stand for permission to be granted to one side in a football game to use the flying wedge, the flying tackle, signals in the huddle, clipping, and slugging, and at the same time applying penalties to the other side for the same practice?”

When the remarks of L. L. Balleisen, secretary, Industrial Division, Brooklyn Chamber of Commerce, quoted in Brief for Petitioner, p. 12, n. 7, are read in context it will be seen he too was concerned solely with the "one-sided" character of the bill. Balleisen's reference to a labor organization hiring employees and hence being an employer had nothing to do with any organizational problems of those employees but merely pointed to an easy legalism available for use in subjecting labor organizations to the full sanctions of the Board for their unfair labor practices directed at employees of other employers. Hearings, *op. cit.*, pp. 651-654, reprinted 1 Leg. His. N.L.R.A. 1935, pp. 689-692.

Only two witnesses were concerned with the rights of employees of unions and in each instance the witness made it clear his concern was with employees hired by a union for the purpose of carrying on a business or industrial enterprise. Leslie Vickers, economist, American Transit Association, in sentences preceding and following those quoted in Brief for Petitioner, pp. 12-13, n. 7, shows he has in mind the business enterprises run by unions. Mr. Vickers stated (Hearings, *op. cit.*, p. 682, reprinted 1 Leg. His. N.L.R.A. 1935, p. 720):

"The history of labor organizations becoming rich and powerful and entering into business is too recent to disregard in connection with this subject. * * * Under the exclusion as now contained in the bill it is entirely conceivable that labor organizations in themselves will displace industrial organizations, and if and when they do they will not be required under the language of this exclusion to comply with the provisions of this act."

We read the latter sentence of Mr. Vickers' statement quoted above as pointing to the competitive advantage the exclusion may give to labor organizations in their business enterprises. We can think of no other way that even the wildest economist could suggest that the exclusion might result in a displacement of other industrial enterprises by those run by unions.

The second witness concerned with the effect of the exclusion where unions embark on business enterprises was likewise an economist, Dr. Gus W. Dyer, professor of economics at Vanderbilt University. He stated (Hearings, *op. cit.*, p. 902, reprinted 1 Leg. His. N.L.R.A. 1935, p. 940):

"Labor organizations may employ an unlimited number of workers to engage in all sorts of business activities. But they are not employers and those who work for them are not employees."

As economists the above two witnesses were in a position where they were more likely than most other persons to have a broad perspective of the extent to which unions had embarked on industrial ventures. During the decade preceding their testimony many American unions had operated substantial business enterprises.¹⁰ And a few unions had even been accused of playing the role of anti-union employers with respect to their own industrial employees. The best known instance is that of the *Coal River*

¹⁰ Selig Perlman and Philip Taft, *History of Labor in the United States, 1896-1932* (MacMillan, 1935), pp. 572-579 chapter entitled "Labor In Imitation of Business"; Herbert Harris, *American Labor* (Yale Uni., 1939), pp. 250, 336-338; Florence Peterson, *American Labor Unions* (1945), pp. 35-37, 177; Harry A. Millis and Royal E. Montgomery, *Organized Labor* (1945), pp. 344-352.

Collieries case where the Brotherhood of Locomotive Engineers purchased as an investment in the early 1920's a mining property in the heart of the then non-union West Virginia mining region. As a result of the difficulty in paying union wages in the mines and competing with non-union mines the Brotherhood got into a public dispute with John L. Lewis and the United Mine Workers.¹¹

At the close of the hearings in 1934, the Senate Committee on Education and Labor reported S. 2926 with the definition of employer amended so as to exclude "any labor organization (other than when acting as an employer)". Section 2 (2) of S. 2926, 73rd Cong., 2d Sess., as reported, reprinted 1 Leg. His. N.L.R.A. 1935, p. 1085. The accompanying committee report justified the exclusion of labor organization from the definition of employer on the ground that legalistically every labor organization is in "one sense" an employer because it "hires clerks, secretaries, and the like" and unless excluded might be barred as such from inducing employees to join. The report explains that this exclusion because of the "one sense" in which every union is an employer in no wise necessitates the exclusion of a union when in the other sense it is an employer, and hence the bill includes labor organizations in the other sense. The inference is unescapable that employer sense in which unions are included "when acting as an employer" is not as the employer of "clerks, secretaries, and the like" but as the employer of employees in an industrial or business enterprise. S. Rep. No. 1184 on S. 2926,

¹¹ Locomotive Engineers' Journal, August 1923, p. 625; Seligman and Taft, *op. cit.*, p. 578; Harris, *op. cit.*, p. 250.

73rd Cong., 2d Sess., p. 4, reprinted 1 Leg. His. N.L.R.A. 1935, p. 1102.

In 1935, the bill which became the National Labor Relations Act, as introduced by Senator Wagner, defined employer to exclude all labor organizations unqualifiedly. Section 2 (2) of S. 1958, 74th Cong., 1st Sess., reprinted 1 Leg. His. N.L.R.A. 1935, p. 1296. The omission of the qualifying parenthesis, which would have included unions when acting as employers, was justified on the basis of the ambiguity of the qualification and the rarity of the situation for which the qualification was designed. Thus the Senate Committee Comparison of S. 1958, 74th Cong., 1st Sess. with S. 2926, 73rd Cong., 2nd Sess., as reported, p. 19, reprinted 1 Leg. His. N.L.R.A., 1935, p. 1342, states:

"The parenthesis in the committee draft is omitted as unduly confusing and as making the entire reference to labor organizations in the subsection very ambiguous and difficult of construction. The *extreme* case against which the parentheses [sic] was intended to guard does not seem to justify endangering the entire purpose of the provision, that a labor organization or anyone acting in the capacity of officer or agent of such organization shall not be deemed an employer and subject to the act because of activities which it is the very purpose of labor organizations or their officers to engage in." (Emphasis supplied).

The use of the word "extreme" which Board Member Murdock considered so revealing of Congressional intent (R. 237a-238a), in the above committee comparison of the two bills, must have had reference to the instances of unions going into business urged by the two economists, Mr. Leslie Vickers and Dr. Gus W. Dyer, as described heretofore (pp. 60-61,

supra). The parenthetical "(except when acting as an employer)" had been inserted solely to meet their criticism and was now being omitted because of the infrequency of instances of unions going into business.

Nowhere in the hearings in 1935 does there appear to have been any reference to the rights of employees of unions. Neither employees engaged in business enterprises run by unions nor employees engaged in traditional trade union activities seem to have been in the thinking of any witness. Those who opposed the bill as "one-sided" because it did not reach "coercion and intimidation from any source" again listed the exemption of labor organizations from the definition of employer as a defect in the bill. Robert G. Graham, vice president of Graham-Paige Motors Corp., whose testimony the Brief of the Petitioner (p. 14, n. 12) purports to quote, falls in this group. The petitioner quotes Mr. Graham as criticising the effect of Section 2 (2) to exclude labor organizations from the "requirements" to which employers are subject. The word he used was "inquisitions." The sentence itself follows a criticism of the broad powers the bill would confer on the Board to have access to and the right to copy any evidence of persons being investigated or proceeded against. Hearings before Senate Committee on Education and Labor on S. 1958, 74th Cong., 1st Sess., p. 604, reprinted 2 Leg. His. N.L.R.A. 1935, p. 1990. Mr. Graham expressly stated that the exemption of labor organizations from the definition of employer showed the "one-sided character of this legislation" and called for amendments which would police labor equally with industry. In this vein he stated (Hearings, *op. cit.*, pp. 609-610, reprinted, 2 Leg. His. N.L.R.A. 1935, pp. 1995-1996):

"Labor organizations should be required to adopt and use sound accounting methods, subject to examination by appropriate public authority as to all funds received and disbursed. Certainly no organization should be given the rights accorded by this bill without being held strictly accountable and responsible for the exercise and results of such rights and without being subject to the jurisdiction and to the orders of our courts.

"The one-sided character of this legislation is indicated by the restraints placed upon employers as against the lack of any restraints whatsoever upon labor organizations. The theory, of course, is that employers are supposed to be protected by the common law.

"What protection does the common law offer to the employer against such coercive tactics as the flying motorcade used in the textile strike?

"It is only fair when a law restricts one party that it should also restrict the other parties involved."

The parenthetical expression "(other than when acting as an employer)" again appeared in the bill in 1935 as reported by the committee. Section 2 (2) of S. 1958, 74th Cong., 1st Sess., as reported, reprinted 2 Leg. His. N.L.R.A. 1935, p. 2286. The committee report contained the paragraph quoted by Board Member Murdock in his concurring opinion. This paragraph reads as follows (S. Rept. No. 573, on S. 1958, 74th Cong., 1st Sess., p. 6, reprinted 2 Leg. His. N.L.R.A., 1935, p. 2305):—

"The term 'employer' excludes labor organizations, their officers and agents (except in the *extreme* case when they are acting as employers in relation to their own employees). Otherwise

the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions." (Emphasis supplied.)

Board Member Murdock read the word "extreme" as expressing the Congressional intent that only unions engaged in business ventures should be subject, as employers, to the Act. Board Member Murdock stated (R. 237a-238a):

"There is nothing 'extreme' or unusual in a union having employees in carrying on its normal collective bargaining functions. At the minimum unions commonly have office and clerical employees and paid organizers, as Congress plainly knew. Therefore Congress must have been talking about something else when it made reference to 'extreme cases' where they are acting as employers in relation to their own employees. Such 'extreme cases' do exist where unions have departed from their traditional role and embarked on commercial enterprises—banks for example—where they have employees in the same context as any other industrial employer. Plainly then, this exceptional and limited area must be what Congress had in mind. As such, it is the sole exception in which unions are included in the definition of 'employer' and are subject to 8 (a) sections of the Act." (Footnote omitted.)

The legislative history of this provision as set forth above can leave no doubt that the parenthetical expression "(other than when acting as an employer)" was inserted solely for the purpose of reaching those unions who engaged in industrial or business enterprises.

2. Consideration of the adverse effects upon unions which would result from any attempt to apply the provisions of the Taft-Hartley Act which protect the right to be opposed to unions equally with the right to support unions, to the staffing of labor organizations establishes that Congress intended to apply the Act only to the commercial activities of unions

If, in view of the foregoing legislative history, any ambiguity with respect to the intent of Congress remains, this Court in resolving the ambiguity may properly consider the problems which would be created by any attempt to apply the provisions of the Labor Management Relations Act to unions engaged solely in traditional trade union activities. The occasions upon which this Court resorts to such a method of legislative construction and the standards it applies in doing so were stated in *Vermilya-Brown Co. v. Connell*, 1948, 335 U.S. 377, 387-388, as follows:

"While the general purpose of the Congress in the enactment of the Fair Labor Standards Act is clear, no such definite indication of the purpose to include or exclude leased areas, such as the Bermuda base, in the word 'possession' appears. We cannot even say, 'We see what you are driving at, but you have not said it, and therefore we shall go on as before.' Under such circumstances, our duty as a Court is to construe the word 'possession' as our judgment instructs us the law-makers, within constitutional limits, would have done had they acted at the time of the legislation with the present situation in mind." (Footnotes omitted.)

The Board did not consider the merits of the charges of unfair labor practices levelled at the *amici curiae*. The Board ordered and heard oral argument only on with respect to the applicability of the Act

(R. 219a). An official transcript of that argument was taken by the Board. The colloquies between Board members and counsel reflect many of the respects in which it would be utterly incongruous to attempt to apply the unfair labor practice provisions of Section 8 (a) to relations between a labor union and members of its staff engaged solely in traditional trade union activities. Others of these incongruities appear in the Trial Examiner's Intermediate Report. Still others are reflected by the record and the pleadings.

The most usual situation is for employees of labor organizations to be members of that organization. Indeed, Board Member Murdock expressed amazement that counsel for the petitioner should claim that organizers and negotiators for a union had both the right to be members of any union they chose or opposed to unionism and also the right to act for their employer in conducting collective bargaining negotiations. (Transcript of Oral Argument, pp. 48-51). His views in this regard appear in part in the following colloquy between Board Members and Mr. Finley, counsel for the petitioner (Transcript of Oral Argument, pp. 48-49):

"Mr. Murdock: In line with the question that I propounded to one of the other lawyers, I would assume that your union, the one you represent, would not have any employees engaged in collective bargaining who were not members of your union, would you?"

"Mr. Finley: Are you referring to the International or the local?"

"Mr. Murdock: To the representative. If your International or a local, representing a certain

group of employees for collective bargaining, you would not have anyone engaged in that particular activity who was not a member of the union, would you?

"Chairman Farmer: An organizer, for example, or an International representative who does the bargaining for the union. You are a union office worker.

"Mr. Finley: Yes.

"Chairman Farmer: And you grant his statutory right to be a member of yours or a different labor organization.

"Mr. Murdock: That is all.

"Mr. Finley: That is the question?

"Mr. Murdock: Well, what I am getting at is this: * * * it would seem to me absolutely incompatible with the duty of collective bargaining to have anyone sitting in their bargaining meetings of the Teamsters' Union who is not actually a member of the Teamsters' Union. That brings us around * * * to the question of whether Congress could possibly have had that type of employment in mind when it referred to the employment of labor union of its own employees.

"Then, doesn't that bring us around to this aspect of the situation: that what Congress must have had in mind is employees of a labor union who are not engaged in any way in that collective bargaining function, because of the incompatibility that would exist if you had other unions organizing, let's say, the very people who were doing the collective bargaining for the union?"

Board Member Murdock likewise raised the issue of whether the same considerations were applicable to the office clerical employees whose tasks concerned

only traditional trade union functions. His view that they were was stated as follows (*Ibid.*, p. 51):

“Mr. Murdock: Let's assume that the duties of clerks and stenographers and so on are limited exclusively to the union activities, as distinguished from any commercial activities. Certainly those clerks and stenographers, if they were not members of that particular union, were not particularly interested in the welfare of that union's activities in the representation of employees, and could cause a lot of trouble, I would think, in all functions of collective bargaining.”

(With respect to the representatives of management who conduct collective bargaining, make and enforce no solicitation rules, make speeches to and conduct interviews with, employees about labor organization, and those who serve as secretaries, stenographers, clerks and switchboard operators for these representatives of management, Congress has made plain its view that the loyalty to management essential to their job is inconsistent with application of the Act to them. The reasons which motivated Congress in excluding supervisors from the definition of employee in the Act and for rejecting as unnecessary exclusions of confidential employees because the Board already excluded all clerical employees having access to confidential employer labor policy, are equally applicable to the staffs of labor unions. The statements appearing in the legislative history of the Labor Management Relations Act show Congress believed it was only according to management the same right as unions already had to apply discriminatory standards in selecting and retaining organizers, negotiators and clerical staff to collect dues, draft contracts and take dictation from union officers.

House Report No. 245, 80th Cong., 1st Sess., on H.R. 3020, pp. 16-17, reprinted 1 Leg. His. L.M.R.A. 307-308, explains the exclusion of supervisors as follows:

*"Management, like labor, must have faithful agents.— * * **

"What the bill does is to say what the law always has said until the Labor Board in the exercise of what it modestly calls it 'expertness,' changed the law: that no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for any reason, he does not trust." (Emphasis in original).

The above quoted House Report, in listing the various aspects of labor relations in which undivided loyalty from employees is essential, mentions the counterpart on the employer's side of almost every job performed for the union by the employees here involved. Thus the report states (*id*):

*"just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons * * * to settle their complaints and grievances * * * and to carry on the whole of labor relations.*

*"Labor relations people negotiate labor agreements and handle disputes not settled in the shops. * * * Doctors, nurses, safety engineers and adjusters handle claims for disability benefits * * *.*

"Other employees handle intimate details of the business that frequently are highly confidential. Some affect the employer's relations with labor."

The repeated references in this legislative history to the need of management for representatives to serve them with "undivided loyalty"¹² are equally applicable to the needs of unions. To require a union to retain in its employ as an organizer, negotiator, collector of dues, or receptionist one who is anti-union or pro-rival union can inflict untold harm on the union. These are all jobs which can only be performed satisfactorily by enthusiasts for the union. The same hostility which would cripple a management representative who was charged with the duty of making an anti-union speech to employees when he really believed in the union would equally cripple a union representative who was sent out to organize or collect dues for the union when he was opposed to unions in general or that particular union.

The propriety of subjecting to the regulatory features of the Act the relationships between management and its clerical staff having access to confidential labor policy was fully considered by Congress at the time it enacted the Labor Management Relations Act. The House had favored an express exemption. Its position was set forth in H. Rept. No. 245, 80th Cong., 1st Sess., on H.R. 3020, p. 23, reprinted 1 Leg. His. L.M.R.A. 314:

"The Board, itself, normally excludes from bargaining units confidential clerks and secretaries to such people as these. But protecting confidential * * * information * * * ought not to rest in the administrative discretion of the Board.
* * *

¹² S. Rept. No. 105, 80th Cong., 1st Sess., on S. 1126, p. 5, reprinted 1 Leg. His. L.M.R.A. 411; 93 Cong. Rec. 3443, 3836, 4283, 5014 reprinted 1 Leg. His. L.M.R.A. 647, 2 Leg. Hist. L.M.R.A. 1008-1009, 1148, 1496.

The Senate, however, felt an exclusion was unnecessary because the Board's interpretation of the Act was satisfactory. The House acquiesced in this position. House Conference Report No. 510, 80th Cong., 1st Sess., on H.R. 3020, p. 35, reprinted 1 Leg. His. L.M.R.A. 539 states:

"The conference agreement, in the definition of 'supervisor,' limits such term to those individuals treated as supervisors under the Senate amendment. In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the Act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect."

Senator Taft on the floor of the Senate gave almost an identical explanation of the intent of the conference committee in accepting the Senate version of the bill. 93 Cong. Rec. 6442, reprinted 2 Leg. His. L.M.R.A. 1537.

Organized labor has never claimed that those representatives of management who made labor policy should be union members. This Court recited facts in its opinion in *Packard Motor Car Co. v. N.L.R.B.*, 1947, 330 U.S. 485, 487, showing that the foremen there involved did not act as management representatives in formulating labor policy and that even their role in executing it was largely ministerial. Nor has organized labor claimed that confidential secretaries of management representatives should become union members. While unions have often differed with

the Board as to whether the duties of given clerical employees involved access to confidential labor policy, the frequent instances in which they have agreed with employers on exclusion from units of those who did have access attests to their recognition that these jobs too require "undivided loyalty."¹³

The Board's present policy makes the exclusion as "confidential" turn upon the character of the work of the person whom the employee assists or for whom the employee acts in a "confidential" capacity, rather than the nature of the work performed by the "confidential" employee. The test is whether the persons assisted by the "confidential" employee "formulate, determine and effectuate management policies in the field of labor relations."¹⁴ All of the persons assisted by the office clerical employees here involved formulated, determined and executed labor organization policies in the field of labor relations. As officers of labor organizations they were the counterparts on labor's side of the persons who formulate, determine and effectuate management policies in the

¹³ In the following cases the union agreed to the exclusion of employees described: *B. F. Goodrich Co.*, 1950, 92 NLRB 575, 576 ("senior stenographer" who "maintains confidential files of the personnel manager"); *E. P. Dutton & Co., Inc.*, 1941, 33 NLRB 761, 767, n. 8 ("private secretaries"); *Brooklyn Daily Eagle*, 1939, 13 NLRB 974, 985, n. 5 (secretary to publisher and secretary to secretary treasurer); *General Telephone Co. of Ohio*, 1955, 112 NLRB 1225, 1228 ("parties have agreed to exclude . . . all payroll clerks in the personnel department and personnel clerks therein, as well as the treasury cash clerk, as confidential employees"); *Curtiss-Wright Corp.*, 1953, 103 NLRB 458, 459-460 (secretary to quality control and metallurgical engineering manager); *B. F. Goodrich Co.*, 1956, 115 NLRB 722, 725, n. 8 (personal secretary to personnel manager).

¹⁴ *B. F. Goodrich*, 1956, 115 NLRB 722, 724.□

field of labor relations. The officers of the Teamsters International, the Joint Council and the various locals did collective bargaining for employees. The office clerical employees here involved assisted them. Their duties were the same kind as have been performed by those whom the Board has classified as confidential. Persons excluded by the Board as confidential employees have been described as performing such duties for corporate or personnel officers as taking dictation, receiving incoming phone calls, typing reports, serving as cashier or accounting machine operator, or being present at staff meetings.¹⁵

These are just the kind of duties which clerical office employees regularly perform for labor unions and which the staff here involved was engaged in performing.

Quite apart from the divided loyalty which would certainly exist if employees of labor unions have the right by law to be anti-union or pro-rival union, the application of the Act to such employees would create such difficult problems as whether a union committed unfair labor practices by accepting its own employees.

¹⁵ *Minneapolis-Honeywell Regulator Co.*, 1954, 107 NLRB 1191; *Creamery Package Mfg. Co.*, 1941, 34 NLRB 108, 110; *General Telephone Co. of Ohio*, 1955, 112 NLRB 1225, 1228; *Potomac Electric Power Co.*, 1955, 111 NLRB 553, 562; *Koehring Southern Co.*, 1954, 108 NLRB 1131, 1133; *Ohio Ferro Alloys Corp.*, 1953, 107 NLRB 504, 505; *Bond Stores, Inc.*, 1952, 99 NLRB 1029, 1031, n. 4. While in *B. F. Goodrich*, 1956, 115 NLRB 722, 724, n. 7, the *Minneapolis-Honeywell* and *Bond* cases are overruled to the extent that they classified as confidential employees who merely assisted "persons involved in handling grievances" or other persons not engaged in formulating, determining and effectuating labor policy, there is no suggestion in the *Goodrich* case that the character of the tasks which the alleged confidential employee performs for the formulator or executor of labor policy is material.

as members. Here charges of domination of itself in violation of Section 8 (a)(2) of the Act were brought against Teamster Local 223 (R. 36a). The respondent International Teamsters Union was likewise charged with dominating its own local (R. 35a). The Trial Examiner found that "Local 223 has in its capacity as an employer contributed unlawful support to itself in its capacity as a labor organization" (R. 180a) but found it "unnecessary to pass on whether by the foregoing conduct Local 223 has dominated itself, assuming that to be possible" (R. 180a). The Trial Examiner likewise sustained charges that the International had contributed support to its own local in violation of Section 8 (a)(1) and (2) of the Act (R. 181a).

In this connection, at the oral argument before the Board, Board Member Peterson inquired of Mr. Finley, counsel for the petitioner, Local No. 11, of the Office Employees International Union as follows (Transcript of Oral Argument, p. 45):

"Mr. Peterson: Who represents the employees of your International Union, or any of its officers [locals] ?

"Mr. Finley: * * * We have a local union here in Washington, and I have the impression—now, I am not certain about this at all—that they are represented by Local 2, of the Office Employees.

"We might get into some rather detailed, complicated father-son, parent-child, relationships there * * *"

That Congress could have intended the Act to be applied to bar a union from supporting itself or one of its locals seems inconceivable.

The issues raised by the role of the petitioner as a competitor of the Teamsters in organizing office employees of industrial employees in the Portland area (Tr. 300-304, 388-389) and at the same time organizing office employees of the Teamsters unions were likewise the subject of attention at the oral argument. The repeated references therein to the case of *Bausch & Lomb Optical Co.*, 1954, 108 N.L.R.B. 1555, 1558-1560, require acquaintance with that case before the colloquies can be read intelligently. In that case the Board held that an employer was not required by the Act to bargain collectively with a union which engaged in a rival optical business. The Board's rationale as there stated was as follows (108 N.L.R.B. at 1559):

"it is necessary to view the Act's collective-bargaining requirements in the light of the dual capacity which the Union now occupies. Collective bargaining is a two-sided proposition * * * the union must be there with the single-minded purpose of protecting and advancing the interests of the employees * * *. In our opinion, the Union's position at the bargaining table as a representative of the Respondent's employees while at the same time enjoying the status of a business competitor renders almost impossible of operation the collective-bargaining process. * * *. In our opinion, the situation created by the Union's dual status is fraught with potential dangers."

The relevancy of the *Bausch & Lomb* case was suggested by counsel for the Teamsters Local 226, Mr. Landye, in answer to a question from Chairman Farmer as to whether there was "any incompatibility in one labor organization representing or attempting to organize employees of another labor organization" (Transcript of Oral Argument, p. 31). Thereafter

Board Member Peterson engaged in the following colloquy with Mr. Finley, counsel for the petitioner, Local 11 of the Office Employees International Union (*Ibid.*, pp. 45-47):

"Mr. Peterson: I am not trying to be facetious, but as I understand it, Local 11, involved in this case, and Local 223 of the Teamsters are in the Portland area, or were engaged competitively in organizing an office, am I correct?"

"Mr. Finley: Apparently that was the case here.
* * *

"Mr. Peterson: What, if any, problems do you see of the Bausch & Lomb variety, in that situation?"
* * *

"Mr. Peterson: Assuming Local 223 and Local 11 are engaged in, competitively engaged in organizing office employees in the Portland area, does it seem to be anomalous to have the office employees of Local 11 stay represented by Local 223, and the office employees of Local 223 located by Local 11, when the two organizations are in general competition for the representation of the employees of the other employers?"

"Mr. Finley: That certainly would be a mixture that many of us wouldn't like to untangle and I do say in all seriousness, however, that this becomes a sort of a jurisdictional problem. The Office Employees International Union, defines its jurisdiction and the Brotherhood of Teamsters defines its jurisdiction.

"Most of you are aware again of some jurisdictional disputes that have been going on and I can say, in all fairness, that the Teamsters are trying to broaden the jurisdiction a little bit. You get into jurisdictional questions here and I did want to avoid that. I do not think it is something that really should get mixed up in this case.

"Chairman Farmer: No. We are concerned about your saying you wanted to discuss the question of whether it effectuated the policies of the Act. Now it is relevant, isn't it, if you get into the problem you are reluctant to discuss, or attempting to solve, doesn't that cast some doubt on whether it is good policy to go along with this proposition that you are advancing?

"Mr. Finley: No. I think the policy should be that we have to go ahead with observing the law, and I think a better policy would be as the Board has done in many other instances—let the labor organizations themselves draw their own lines and work this thing out. I think we are working that out. The coming merger of the A F of L and CIO is certainly a factor in consideration, and there are going to be mergers of the others.

"Chairman Farmer: I don't see the relevance of a merger in this type of case."

The many incongruities which would arise if the Act were applicable to the situation here presented must compel the conclusion that Congress could not have intended to apply the Act to employees of unions so long as they are functioning only in a traditional trade union role.

3. **Serious Constitutional problems under the First Amendment would be presented by any construction of the National Labor Relations Act which would require a labor organization not to discriminate, because of union membership or activity or the lack thereof, in its employment relationship with persons paid by it to engage solely in traditional trade union activities**

"The obligation rests also upon this Court in construing congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality." *United States v. C.I.O.*, 1948, 335 U.S.

106, 120-121; *United States v. Delaware & Hudson Co.*, 1909, 213 U.S. 366, 407-408; *American Communications Ass'n v. Douds*, 1950, 339 U.S. 382, 407.

The First Amendment to the Constitution of the United States, in its protection of the right to freedom of speech, assembly and petition, from Congressional infringement, encompasses the right of citizens to form labor organizations and conduct traditional trade union activities. *Thomas v. Collins*, 1944, 323 U.S. 516, 531-532; *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 1937, 301 U.S. 1, 33-34; *American Communications Ass'n v. Douds*, 1950, 339 U.S. 382, 389-390, 398, 406-407; *Inland Steel Co. v. N.L.R.B.*, 7 Cir., 1948, 170 F. 2d 247, 258, certiorari denied, 336 U.S. 960; *Local 309, United Furniture Workers of America, C.I.O. v. Gates*, D.C. N.D. Ind., 1948, 75 F. Supp. 620, 624. Thus, the First Amendment protects unions in their right to "have officers with such affiliations and political purposes as they might choose." *Kedroff v. St. Nicholas Cathedral*, 1952, 344 U.S. 94, 119, stating the ruling in *American Communications Ass'n v. Douds*, 1950, 339 U.S. 382.¹⁶ But officers in the present day world

¹⁶ In the *Kedroff* case this Court held that a state violated the Fourteenth Amendment (as it adopts and makes applicable to the States the guaranties of the First Amendment) when the state substituted its judgment as to who should be an officer of the church for that of the established tribunals of the church. The *Douds* case had been relied upon by the Court of Appeals of New York in rejecting the claim of constitutional infringement. This Court did not base its reversal in the *Kedroff* case on any distinction between trade unions and religious associations. Rather it assumed that they had identical constitutional rights with respect to freedom in selecting officers. It distinguished the *Douds* case on the ground that under the Taft-Hartley Act (344 U.S. at 119): "Unions could have officers with such affiliations and political purposes as they might choose but the Government was not compelled to allow

cannot function without hired organizers, negotiators and confidential clerical staffs. Cf. *In re Porterfield*, 1946, 28 Cal. 2d 91, 168 P. 2d 706, 719. To require officers of a union to dictate letters to, conduct conferences and meetings in the presence of, and collect dues through employees whose loyalties to the union were suspect, would interfere with their freedom to conduct trade union activities as much as the presence of police officers at union meetings did in *Local 309, United Furniture Workers of America, C.I.O. v. Gates*, D.C. N.D. Ind. 1948, 75 F. Supp. 620. In enjoining police officers from attending meetings held by a union in a public court house the court said (75 F. Supp. at 624):

"It is clearly established by the evidence that the presence of the state police officers has prevented the union members from discussing freely the matters they wish to take up. It is true that the police officers have not actively prevented the plaintiffs from conducting their meetings as they desire or from speaking if they wished. But the evidence is that their presence and their taking of notes have had the same effect as if there were active interference. It is indicated that this has come about because of the belief that the state police have taken a role as partisans in the labor dispute between the Union and the Smith Manufacturing Company. This feeling of restraint, frustration, and interference within the minds of Union members, engendered by the presence of the state police, appears to be a natural result flowing from the conduct of the police officers in their relations with the striking employees and

those officers an opportunity to disrupt commerce for their own political ends. We looked upon the affidavit requirement as an assurance that disruptive forces would not utilize a government agency to accomplish their purposes."

the employer. The evidence discloses that this feeling is neither imaginary nor inconsequential.

“* * * The freedom and liberty to express ourselves privately and to hold private assemblies for lawful purposes and in a lawful manner without government interference or hindrance is protected as much by the First Amendment as the right to do so publicly.”

As is apparent from the statement of facts (*supra*, pp. 12, 14-16), the record here discloses that distrust by officers of the unions of clerical employees who joined a rival union led them to have private telephone lines installed and to leave their own offices to make calls over private lines. Several officers believed their mail was being withheld by a disloyal secretary. A union cannot be expected to believe a cashier at a dues collection window who was herself an ardent member of the Office Employees Union would inspire ready payment of dues to the Teamsters from employees at other plants where the Office Employees and the Teamsters were conducting rival organizational campaigns. The very face of an ardent Office Employee member at the Teamsters cashier window would be a deterrent to joining or continuing membership in the Teamsters to all employees of other employers whom the Office Employees was trying to organize.

All these serious constitutional problems are avoided if Section 2 (2) of the National Labor Relations Act is construed as including labor organizations within the definition of employer only when they conduct business or industrial enterprises.

C.

Neither the Oregon Teamster's Security Plan Office nor Earhart, its administrator, is either an employer or a labor organization within the meaning of the National Labor Relations Act, as amended, but to the extent that either receives funds from an employer in an industry affecting commerce, each is a statutory "neutral" within the meaning of Section 302 (c)(5) of the Labor Management Relations Act and as such is not subject to the jurisdiction of the National Labor Relations Board

Health and welfare plans maintained by contributions of employers engaged in an industry affecting commerce, are illegal under the Labor Management Relations Act unless they are administered by bipartisan trustees, together with such "neutral" persons as they may select to assist them. Section 302 (c)(5) (B) (29 U.S.C. 186 (c)(5) (B)) establishes the requirement of neutrality. Subsection (c) exempts from the criminal sanctions imposed upon payments to, or receipts of payments by, a representative of employees, instances where the payment is to a trust fund established for the purpose of paying benefits to employees as described in subparagraph (5) thereof. Proviso (B) to subparagraph (5) specifies one of the essential features of such a trust fund. The language of Proviso (B) insofar as here pertinent is:

"the detailed basis on which such payments [to employees] are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such *neutral* persons as the representatives of the employers and the representatives of the employees may agree upon * * *." (Emphasis supplied.)

If the requisite commerce facts exist to bring the Security Plan Office or Earhart within any provision

of the Labor Management Relations Act, they are subject to regulation solely under Section 302 and not by the National Labor Relations Board. The "Trust Agreement Oregon Teamsters Construction Industry Welfare Plan" appears in the record (G. C. Exh. No. 2, Tr. 105). The testimony established that its terms were substantially identical with those of the other 17 trust agreements governing the Security Plan Office and Earhart (Tr. 107-108). These terms show they were carefully drafted to meet the requirements of Section 302. Both counsel for the Security Plan Office and Earhart stated during the hearing that the trusts conformed with the Taft-Hartley Act (Tr. 46, 56).

The trust agreement shows that three trustees are designated by Teamsters Joint Council No. 37 and three by the Portland Chapter of the Associated General Contractors of America (G.C. Exh. No. 2, Tr. 105). Its only provisions which are relevant to the status of the Security Plan Office and Earhart, its administrator, appear in Article VI, entitled "Administration of Trust Fund." The pertinent portions of this article are as follows:

"(a) The administration of the Trust Fund shall be vested wholly in Trustees, and for such administration, the Trustees shall have the power, and it shall be their duty to

"1. Establish an office in Portland, Oregon.

"4. Employ such clerical staff, and acquire such equipment, as may be necessary to properly carry out the administration of this Trust.

"8. Appoint an Administrator."

Earhart testified that the name "Oregon Teamsters' Security Plan Office" does not appear in any of the trust agreements but appears on the door of his office (Tr. 68). With respect to the work performed by Earhart and his staff, the undisputed evidence showed that they processed employee claims against welfare funds, receiving the claim, verifying physicians' reports, determined eligibility of the employee and coverage of the claim, allowed or disallowed the claim, and if allowed, drew a check in the appropriate amount and delivered it to the employee claimant (Tr. 121-123, 362).

The duties of Earhart and his staff in assisting the trustees in administering the trusts, as well as the highly discretionary powers which Earhart and his staff exercise in allowing or disallowing employee claims against the welfare fund, bring both Earhart and his staff into that category of persons who must be "neutral" if the requirements of Section 302 (c) (5) (B) are to be met.

We express no opinion as to whether the term "neutral" would preclude a member of Earhart's clerical staff from joining a union. We do think that it is evident the concept of neutrality which Congress had in mind is inconsistent with the notion that the Security Plan Office or Earhart should be subject to the jurisdiction of the National Labor Relations Board. The dual administration of the concept of "neutral" by the criminal courts as provided in Section 302 must necessarily exclude regulation of the same relationships by the National Labor Relations Board under the provisions of the National Labor Relations Act.

II.

IF ANY OF THE AMICI CURIAE WAS SUBJECT TO THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD, THAT BOARD DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT, IN THE CIRCUMSTANCES PRESENTED BY THE RECORD IN THIS CASE, IT WOULD NOT EFFECTUATE THE POLICIES OF THE ACT TO ASSERT JURISDICTION

The then Chairman Farmer and then Board Member Peterson in addition to making the jurisdictional finding that the requisite effect on commerce within the meaning of the Act had not been established (R. 234a), also determined "that it will not effectuate the policies of the Act to assert jurisdiction in this proceeding" (R. 230a).¹⁸ The court below addressed itself solely to the issue of whether, assuming the Board had jurisdiction, its determination not to exercise it was an abuse of discretion (R. 262-264). The majority of

¹⁸ The language "effectuate the policies of this Act" does not appear in the statute in a jurisdictional context but is used only to define the type of affirmative action which the Board may require of any person whom the Board has found guilty of unfair labor practices. Section 10 (c) of the National Labor Relations Act (29 U.S.C. 160 (c)). The only jurisdictional criteria in the Act is the absolute requirement that the unfair labor practices affect commerce within the meaning of the Act. Section 10 (a) of the Act (29 U.S.C. 160 (a)). The Board uniformly enters the finding that it "will not effectuate the policies of this Act to assert jurisdiction" when it believes that an appropriate exercise of its discretion would require it not to assert jurisdiction, whether or not it has the power to do so. See for example the use of this form of finding in the leading cases in which the Board established its standards of "discretionary jurisdiction". *Jonesboro Grain Drying Corp.*, 1954, 110 NLRB 481, 484; *Breeding Transfer Co.*, 1954, 110 NLRB 493; *Hogue and Knott Supermarkets*, 1954, 110 NLRB 543, 545; *McKinney Avenue Realty Co.*, 1954, 110 NLRB 547, 549; *Tanner Motor Tours, Ltd.*, 1955, 112 NLRB 275, 277; *Radio & Television Broadcast Engineers Union*, 1955, 114 NLRB 1354, 1364-1365. In none of these cases did the Board also, as here, make the jurisdictional finding that no effect on commerce within the meaning of the Act had been established (R. 234a).

the court held that there had been no abuse of discretion (R. 264). The court accordingly entered its decree affirming the Board's order of dismissal (R. 265-266).

All of the arguments which we have heretofore advanced to establish that the Board did not have jurisdiction over any of the *amici curiae* are equally relevant to a consideration of whether the Board abused its discretion in declining to act. If these arguments do not establish that the Board lacked jurisdiction, they certainly show, at the very least, that rational reasons existed for not asserting jurisdiction. We offer no criticism of the court below because it affirmed solely on the approval of the Board's exercise of discretion. Nor do we urge that this Court need decide that the Board had no power to act, should this Court agree that even had the Board the power, it properly declined to exercise it. An affirmance of the judgment below on either basis would seem equally appropriate.

A.

The Discretionary Power of the Board to Refuse to Exercise Its Jurisdiction Is Not Subject to Judicial Control in the Absence of Proof That the Board Acted Arbitrarily or Capriciously

The language of the National Labor Relations Act, the statutory scheme as a whole, its legislative history and the uniform holdings of this and other courts establish that the Board is vested with complete discretion as to when to assert its jurisdiction. The only applicable limitations are those imposed by the due process clause of the Fifth Amendment to the Constitution of the United States in its requirement that agencies of government must not act discriminatorily or arbitrarily and by Section 10(e)(B)(1) of the Ad-

ministrative Procedures Act in its direction to courts to set aside agency action found to be "arbitrary, capricious," and "an abuse of discretion" (5 U.S.C. 1009(e)(B)(1)). The controlling decision in this Court is *Amalgamated Utility Workers v. Consolidated Edison Co.*, 1940, 309 U.S. 261. There this Court reviewed the pertinent statutory language, the scheme of the Act, and its legislative history at length. It concluded that the Board, not the courts, and not any private party, was given exclusive power to determine whether unfair labor practices should be remedied. Before setting forth the basis for this conclusion, this Court pointed out that Congress could confer such broad discretion on administrative agencies. Thus this Court stated (309 U. S. at 264):

"Within the range of its Constitutional power, Congress was entitled to determine what remedy it would provide, the way that remedy should be sought, and the extent to which it should be afforded, and the means by which it should be made effective."

This Court then considered each step of the administrative procedure provided by the Act, and pointed to the statutory language and legislative history which established the Board's full discretion as to whether to proceed. This Court said (309 U. S. at 265, 266, 270):

"Congress has entrusted to the Board exclusively the prosecution of the proceeding by its own complaint, the conduct of the hearing, the adjudication and the granting of appropriate relief. The Board as the public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the

instrument to assure protection from the described unfair conduct * * * .

"When the Board has made its order, the Board alone is authorized to take proceedings to enforce it * * * . Again, the Act gives no authority for any proceedings by a private person or group, or by any employee or group of employees, to secure enforcement of the Board's order. The vindication of the desired freedom of employees is thus confided by the Act, by reason of the recognized public interest, to the public agency the Act creates * * * .

* * *

"If the decree of enforcement is disobeyed, the unfair labor practice is still not prevented. The Board still remains as the sole authority to secure that prevention * * * . As the court has no jurisdiction to enforce the order at the suit of any private person or group of persons, we think it is clear that the court cannot entertain a petition for violation of its decree of enforcement save as the Board presents it."

Similarly in *N.L.R.B. v. Denver Building and Construction Trades Council*, 1951, 341 U.S. 675, 684 this Court stated:

"Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

Again in *N.L.R.B. v. Indiana & M. Electric Co.*, 1943, 318 U. S. 9, 18, 19, this Court said:

"The Board has wide discretion in the issue of complaints * * * . It is not required by the statute

to move on every charge; it is merely enabled to do so."

In *United States v. Morton Salt Co.*, 1950, 338 U. S. 632, 647-648, speaking of the powers of the Federal Trade Commission, this Court stated:

"We know that unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns."

For similar statements by lower courts see *Hotel Employees Local v. Leedom*, D. C., D. C. 1957, 39 LRRM 2276 and cases there collected. That court stated:

"There can be little, if any question that the Congress intended to lodge in the Board, rather than in the courts, a determination of what employer-employee relationships so affect interstate commerce as to require the exercise of the powers granted to the Board."

That Congress was fully aware of this construction of the statute by the Board and the courts when it enacted the Labor Management Relations Act, was noted by the United States Court of Appeals for the Ninth Circuit in *Haleston Drug Stores, Inc. v. N.L.R.B.*, 9 Cir., 1951, 187 F. 2d 418, certiorari denied, 342 U. S. 815. There the court stated (187 F. 2d at 420-422):

"The courts have uniformly recognized that the National Labor Relations Act did not confer private rights, but granted only rights in the interest of the public to be protected by a procedure looking solely to public ends. The proceeding authorized to be taken by the Board was not for the

adjudication or vindication of private rights.
* * *

"By the express language of § 10(a) the Board was and still is *empowered* (not directed) to prevent persons from engaging in unfair labor practices affecting commerce. Its discretionary authority in respect of its assertion of jurisdiction was never, so far as we are informed, questioned under the Act as it existed prior to 1947. * * * The Board itself, without judicial challenge, acted on the assumption that it could, for reasons of policy or for budgetary or other reasons, decline to issue an unfair labor practice complaint, or to dismiss a complaint after issuance without determining the existence of an unfair practice, if in its reasoned judgment the policies of the act would be best served by that course. Of this assumption and practice one cannot doubt that Congress was fully cognizant.

* * * * *

"Section 10 of the original act, embracing six subdivisions (a) to (f), dealt with the procedure for the prevention of unfair labor practices. So far as pertinent to the present inquiry its language was left undisturbed by the 1947 legislation. Nothing was added to the section suggestive of an intent on the part of Congress to circumscribe or curtail the Board's authority in respect to the prevention of such practices, or to render less flexible the unfair labor practice provisions of the original Act." (Emphasis the court's)

The same court, in deciding *N.L.R.B. v. Townsend*, 9 Cir., 1950, 185 F. 2d 378, 383, certiorari denied, 341 U.S. 909, stated:

"Providing the Board acts within its statutory and constitutional power it is not for the courts to say when that power should be exercised. Many

factors such as lack of funds or the imminence of a more drastic disruption of commerce in another industry might dictate that in a particular case powers explicitly granted should not be exercised."

For an excellent review of court and Board decisions sustaining the Board's exclusive power to determine whether the "burden on commerce" in any given instance, in the light of other demands on the Board's staff and funds, justifies an administrative remedy, see *Local Union No. 12; Progressive Mine Workers of America, District No. 1 v. N.L.R.B.*, 7th Cir., 1951, 189 F. 2d 1, certiorari denied 342 U. S. 868.

B.

The Express Reference to Labor Organizations in Section 2(2) of the Act Was Solely for the Purpose of Exempting Their Usual Activities With Respect to Employees of Industrial Employers From Proscription and Not for the Purpose of Removing Such of Their Activities as Remained Subject to the Act From the Same Discretionary Jurisdiction as Applied to the Activities of All Other Employers

The sole reason for any reference at all to labor organizations in the definition of employers was to preclude the possibility of the Act being used against unions in instances where their organizing tactics directed at employees of other employers were regarded as intimidatory or coercive of employees in their right to exercise a free choice as to whether or not to join a union. This explanation was stated in the Senate Report on the 1934 bill, the Committee comparison of the 1934 bill with the 1935 bill, and again in the Senate Report on the 1935 bill which became the National Labor Relations Act (see quotations therefrom set forth, pp. 62-66, *supra*). Except for the desire to protect unions from the use of the Act against them in such situations, the definition of em-

ployer would have made no mention of labor organizations. The Congressional intent manifested by the reference to labor organizations in Section 2(2) is wholly exclusionary in character.

The fortuity that the draftsmen of the provision for the exclusion of labor organizations were unable to find a single phrase which exactly measured the exclusion desired and used the legislative device of first "taking away" a larger category than desired, then "putting back" a portion thereof, affords not the slightest basis for inferring any Congressional intent that the portion "put back" is to be treated differently from what it would have been if it had never been "taken away". Without regard to whether Congress intended to exclude trade union employers as such or only as business employers, if the draftsmen could have phrased the definition of "employer" to include "all employers except those functioning in a trade union capacity," no argument could be made that Congress singled out trade unions when functioning in other than a trade union capacity for the mandatory exercise of the Board's jurisdiction because it treated them differently from other employers.

The day has long since passed when the use of the positive rather than the negative, or the use of an exclusion rather than an inclusion, served as a criterion of statutory construction. The purpose of the provision, not its form, is controlling. From the face of Section 2(2) the entirely exclusionary character of the labor organization reference is beyond doubt. The legislative history is in accord.

Indeed, instead of showing that Congress wished to impose a mandatory duty on the Board to proceed

against all unfair labor practices committed by unions against their own employees, the legislative history shows just the opposite. No witness before Congress, no member of Congress, no one anywhere, so far as the legislative history showed, even considered whether the Act should be applicable to relations between a union engaged solely in traditional trade union activities and its own employees. Two witnesses raised the theoretical possibility that if unions went into business on an extensive scale there might be need to apply the Act to them (see pp. 60-61, *supra*). That possibility was regarded as so remote that the committee showed uncertainty as to whether there was any point in covering it. This uncertainty appears in the action of the committee in including the parenthesis in the bill as reported in May 1934, stating it was unnecessary and hence had been taken out in March 1935, and then putting it in again in the bill reported in May 1935 (see pp. 62-65, *supra*).

The National Labor Relations Act contains no provision which limits the Board's discretion in deciding which unfair labor practices to remedy. Neither on the basis of one type of unfair labor practice being more harmful than another nor on the basis of one type of employer being more important in the achievement of the policies of the Act, is there any direction to the Board to proceed mandatorily rather than discretionarily.

Specific statutory mention affords no appropriate basis for fixing standards for the Board's appropriate exercise of its discretionary jurisdiction. The specific reference to special groups usually results from their characteristics which raise special problems as to whether or not they should be included. Any rule

requiring that mandatory discretion be exercised over the specific groups whose special status required their express cataloguing into the large basic groups reverses sound sense. Under such a test borderline cases where opinion as to inclusion or exclusion was divided or where ambiguity required specificity would displace the cases at which the Act was primarily directed.

Several illustrations based on present Board practices show how fallacious it is to assume that even a particularly strong manifestation of Congressional intent to include within the Act displaces Board discretion as to whether to assert jurisdiction. Congressional intent to include as employers subject to the Act persons employing four, three, two or even just one employee was strongly manifested. Attempts to exclude employers of less than 10 employees were vigorously and overwhelmingly repelled.¹⁹ Yet the Board's present "dollar yardstick," measuring impact on commerce in such terms as a \$3,000,000 gross requirement for local utilities, a \$1,000,000 indirect interstate inflow, a \$500,000 direct interstate inflow, etc.,²⁰ rarely brings an employer of ten or less employees before the Board.

The Congressional intent to confer on the Board plenary jurisdiction in the territories without any limitation based on the absence of effect on commerce between the territory and the outside world, was manifested in the clear statutory provisions of Section 2(6). Openly recognizing this to have been the Congressional

¹⁹ See Leg. His. N.L.R.A. 1935, pp. 94, 269-270, 299, 593, 626, 626, 733, 1085, 1099, 1102, 1119, 1320, 1342.

²⁰ For an up-to-date compilation of the Board's "dollar yardstick" see Bureau of National Affairs, Labor Relations Expediter (loose leaf service) 310a-311.

intent, the Board nevertheless exercises its discretion by applying the same "dollar yardstick" to the territories as it applies within the states.²¹

The Board never has power to proceed against any employer unless Congress manifested an intent to include that employer within the Act. If Congressional intent to include imposed a mandatory jurisdiction, the Board's discretionary jurisdiction would be nonexistent. The manner in which Congressional inclusion was effectuated has no logical relevance to whether the Board should exercise its discretion or not.

Both the court below (R. 263-264) and Chairman Farmer and Board Member Peterson (R. 233a) rejected the argument that mention of labor organizations in Section 2(2) deprived the Board of the power it admittedly would otherwise have had to decline to proceed against labor organizations. Their judgment in this respect was eminently sound.

C.

The Determination of the Board That the Standards Which It Applies to Nonprofit Organizations Generally, Are Applicable to Labor Organizations, Was Neither Arbitrary Nor Capricious

All of the arguments which we have heretofore advanced (pp. 53-55) in showing that the noncommercial activities of labor organizations are in the same category as the noncommercial activities of other nonprofit organizations, are fully applicable here. If the noncommercial activities of any nonprofit organization

²¹ *Union Cab Co.*, 1954, 110 NLRB 1921, 1922 (Alaska); *Virgin Isles Hotel*, 1954, 110 NLRB 558, 559; *Sixto Ortega*, 1954, 110 NLRB 1917, 1918 (Puerto Rico); *Cantera Providencia*, 1954, 111 NLRB 848 (Puerto Rico).

are subject to the jurisdiction of the Board, there can be no doubt that Congress did not intend for the Board to exercise such jurisdiction (see pp. 48-52, *supra*).

The Brief for Petitioner, pp. 20-22, argues that unions as such do not engage in businesses and hence the Board's standard amounts to an exemption of all labor organizations from the Act. The statement is not factually accurate but even if it were, it is irrelevant. As we have pointed out heretofore (pp. 60-61, *supra*) witnesses testified before Congress that unions did go into business and should be subject to the Act as employers when they did so. Prominent instances of unions going into business had occurred during the decade preceding the enactment of the Act (see n. 11, pp. 61-62, *supra*).

Whether at the present time unions engage in businesses without incorporating seems likewise immaterial. In the first place the Act remains available and the Board stands ready to apply it to unions if they do embark on business ventures. In the second place, the use of a corporate device to hold title to real estate or to operate a business, would not prevent the Board from proceeding against a labor organization, either as the sole respondent or jointly with the corporation, if it should appear that the labor organization was responsible, in whole or in part, for the violations of the Act.²²

The Board issued an unfair labor practice order against a union as an employer in *Otter Trawlers*.

²² Cf. *Bethlehem Steel Corp.*, 1939, 14 NLRB 539, 611, enforced D.C. Cir. 1941, 120 F. 2d 641, 650, where the parent corporation and sole stockholder of the direct employer was held liable as an employer.

Union, Local 53, 1952, 100 NLRB, 1187, 1195, where the union engaged in a deep sea fishing business included in its membership boat owners and captains as well as their employees, and important policy-making officers and officials of the union were employers or supervisory captains. The unfair labor practices of the union as an employer were directed against the employees of its members.

At least two other Board cases involved unions engaged in businesses. There is the *Bausch & Lomb* case, 108 NLRB 1555 (discussed pp. 77-79, *supra*) where the Board disqualified a union from representing the employees of an optical firm because the union had established a competing optical business. The *Intermediate Report on Guayama Bakers*, 1951, 27 LRRM, 1322, 1323²³ discloses a union engaged in a baking business.

We have not been able to find any collection of current instances of unions operating businesses. A most cursory search for such instances has produced the following:

The United Mine Workers of America is at the present time a part owner of American Coal Shipping, Inc., a company set up by the United Mine Workers, coal producers and several railroads to increase coal export trade to Europe.²⁴

The Seafarers International Union in the early

²³ The case is not officially reported because no exceptions to the intermediate were filed and the Board did not issue a formal decision.

²⁴ New York Times, February 5, 1957, p. 50, vol. 1.

1950's carried on a business of selling blankets, dungarees and tobacco to sailors.²⁵

The International Typographical Union publishes a daily newspaper, *Labor's Daily*.

The International Association of Machinists has just built a large office building at the corner of Connecticut Avenue and N Streets in Washington, D. C., a large part of the space in which is to be rented commercially.

The old Machinists Building located at 9th and Massachusetts Avenue, N. W. in Washington, D. C., has been purchased by the American Federation of State, County and Municipal Workers which rents to others most of the space commercially.

The Bowen Building at 821 - 15th Street, N. W., Washington, D. C., is owned directly by and operated as a commercial office building by the Bricklayers, Masons and Plasterers International Union.

The Brotherhood of Painters owns and operates on a commercial basis an office building in Lafayette, Indiana.

The International Printing Pressman and Assistants Union of North America owns and operates on a commercial basis a hotel in Colorado Springs, Colorado.

²⁵ Nations Business, July 1955, pp. 46, 48-50. The union was charged with and consented to the entry of a decree based on alleged violation of the Federal anti-trust laws. *U.S. v. Seafarers Sea Chest Corp.*, U.S. D.C.E.D. N.Y., 1954 Civ. Docket No. 14674. The charge was that the union was monopolizing the market by requiring ships to exclude all persons except the Union from selling to sailors employed by such ships.

At various times unions have owned and operated banks,²⁶ radio stations²⁷ and a host of other businesses.²⁸

D.

Appraisal of All Relevant Factors Such as the Board's Limited Budget, Small Staff, Large Backlog, the Resultant Presence in Large Areas of Industry of Unremedied Unfair Labor Practice Having a Substantial Impact on Commerce, the Slight Impact on Commerce of Unfair Labor Practices Committed by Unions Against Their Own Staff Members, the Strong Non-Legal Deterrents to Such Conduct by Unions and the Availability of Interunion Machinery for Adjusting Such Disputes, Demonstrates That the Board's Failure to Assert Jurisdiction over the Amici Curiae Was Proper

The National Labor Relations Board in the case of *Breeding Transfer Co.*, 1954, 110 NLRB 493, 497, listed the factors which the Board considered in exercising its discretion with respect to whether or not to assert jurisdiction. The factors as there listed are as follows:

“(1) the problem of bringing the case load of the Board down to manageable size,

“(2) the desirability of reducing an extraordinarily large case load in order that we may give adequate attention to more important cases,

“(3) the relative importance to the national economy of essentially local enterprises as against

²⁶ Harry A. Millis and Royal E. Montgomery, *Organized Labor* (1945), pp. 344-352; J. B. S. Hardman and Maurice Neufeld, *The House of Labor*, N. Y., 1951, pp. 315-318.

²⁷ J. B. S. Hardman and Maurice Neufeld, *op. cit.*, pp. 327-328.

²⁸ Florence Peterson, *American Labor Unions* (1945), pp. 35-37, 177-178; *Business Week*, Jan. 1, 1955, p. 56; *Nations Business*, July 1955, pp. 46, 48-50; Herbert Harris, *American Labor* (Yale Univ., 1939), pp. 250, 336-338; Selig Perlman and Philip Taft, *History of Labor in the United States, 1896-1932* (MacMillan, 1935), pp. 572-579.

those having a truly substantial impact on our economy, and

“(4) overall budgetary policies and limitations.”

The “dollar yardstick” (see p. 95, *supra*) now followed by the Board has left a large area in which unfair labor practices having a substantial impact upon commerce remain without any remedy. None of the unfair labor practices of a local public utility or transit system are remedied unless an annual business in excess of \$3,000,000 is done by the employer. None of the unfair labor practices of most radio and television stations are remedied for very few meet the Board’s dollar yardsticks (see National Labor Bureau, Labor Relations Expediter (loose leaf service) 310b). None of the unfair labor practices of businesses having a direct inflow of less than \$500,000 or an indirect inflow of less than \$1,000,000 are remedied. And so on down the line. Throughout industries in which units are smaller than the “dollar yardstick” requirements, flagrant unfair labor practices are being committed daily.

The issue posed by this case, and each other novel and infrequent case, becomes one of whether public funds should be diverted to its handling, thereby reducing funds available for the policing of industry. When confronted with a case having as slight an impact on commerce as the instant one, how could the Board properly take jurisdiction when so many thousands of really flagrant unfair labor practices throughout vast areas of industry remain unremedied for want of staff and funds to handle them?

The Board’s decision not to assert jurisdiction is justified not only by the relative triviality of the impact

on commerce of unfair labor practices by a union against its own staff members, but also by the existence of other deterrents and remedies for such unfair labor practices. Unions have their own codes of fair conduct with respect to their employees. They have machinery for settling jurisdictional disputes.²⁹

All relevant factors support the Board's determination not to exercise jurisdiction here.

E.

The Proscriptions of the Taft-Hartley Act Against Discrimination Against Anti-Union Employees or Pro-Rival Union Employees, If Applied to Labor Organizations in Their Relationships to Their Staff Engaged in Traditional Trade Union Activities, Could Defeat the Whole Purpose of the Statute

The issue posed by the record is not whether employees of a trade union may form an independent union confined to themselves and then bargain with the employing union. Rather the issue is whether the law compels a trade union not to discriminate against the violently anti-union or pro rival union employee in the hiring and firing of union organizers, negotiators or assistants to officers and agents of the union. For the Taft-Hartley Act protects the right to oppose unions or support rival unions equally with the right to form and join any other unions.

²⁹ See John T. Dunlop, *Jurisdictional Disputes*, Proceedings of New York University, Second Annual Conference on Labor (1949), p. 477; B. Aaron, *Jurisdictional Disputes—Union Machinery for Settling*, 5 Labor Law Journ. 258, 262, 289 (April 1954). That the instant case presented a jurisdictional dispute falling within the settlement machinery of unions see statement of counsel for petitioner during oral argument before the Board, quoted pp. 78-79, *supra*.

Any literal application of the proscription on discrimination against anti-union employees to unions in employment of a staff to conduct its traditional trade union functions, could cripple all unions. Anti-union employers could send anti-union applicants around to the union offices every time a staff vacancy occurred. A union faced with charges of discriminating because of union activity or sympathy in rejecting all such applicants would obviously have a difficult time in proving its selection was not motivated by the desire to discriminate in favor of those most devoted to the union and its objectives.

Both Congress and the Board recognize the proscriptions of the Act are inapplicable to industrial employers in relations with their labor policy personnel (see pp. 70-75, *supra*) and where employees join a union which conducts a business in competition with the employer (see pp. 77-78, *supra*). The following of a parallel rule in respect to labor organizations could not be an abuse of discretion.

CONCLUSION

For the foregoing reasons it is urged that this Court should affirm the judgment below and sustain the order of the Board dismissing all complaints against the *amici curiae*.

Respectfully submitted.

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